

AMENDED IN SENATE APRIL 17, 2006

**SENATE BILL**

**No. 1238**

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**Introduced by Senator Battin**

February 6, 2006

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An act to amend ~~Section 311.3~~ of Sections 290, 294, 311.2, 311.8, 311.9, 502, 502.01, 647.6, 1054.10, 1203.065, 1203.066, 1203.067, 4852.03, and 11165.1 of, to add Sections 287, 287.1, and 287.2 to, and to repeal Sections 311.1, 311.3, 311.4, 311.10, and 311.11 of, the Penal Code, relating to ~~crimes~~ child pornography.

LEGISLATIVE COUNSEL'S DIGEST

SB 1238, as amended, Battin. Child pornography.

*Under existing law, child pornography is a crime, punishable as follows: any person who sends, imports, produces, or duplicates any obscene matter depicting a minor engaged in actual or simulated sexual conduct, with the intent to distribute or exhibit the matter is guilty of misdemeanor or felony, punishable by imprisonment in a county jail for up to one year or in the state prison for 16 months, or 2 or 3 years. Possessing or importing any obscene matter for sale or distribution without commercial purposes, or obscene matter depicting children that is intended for adults is a misdemeanor; if that matter is intended for minors, it is a felony; possession or importation of obscene matter that includes depictions of minors engaging in actual or simulated sexual conduct is punishable by 2, 3, or 6 years in the state prison. Hiring or using a minor to model or pose, or to assist with those functions in creating matter that depicts minors engages in sexual conduct for commercial purposes is a felony punishable by a 3, 6, or 8 year term in the state prison; for noncommercial purposes, the punishment is 16 months or 2 or 3 years in the state prison.*

*Advertising for sale any of the above-described matter is either a misdemeanor or felony with a 2, 3, or 4 year term. Simple possession of the above-described matter is a misdemeanor. Under existing law, sexual exploitation of a child, as defined, is a misdemeanor. Each of these crimes also carries a fine, and an increased sentence for a prior conviction.*

*This bill would revise and recast the provisions related to child pornography as follows: possession - imprisonment in the state prison for 2, 4, or 6 years; distribution without commercial intent – 3, 6, or 8 years; distribution with commercial intent – 5, 7, or 9 years; production for noncommercial purposes – 6, 12, or 16 years; production for commercial purposes – 9, 12, or 16 years. The bill would increase the fines for those crimes and would add enhancements to these crimes for prior offenses, physical injury sustained by the victim, or multiple victims. The bill would make persons convicted of any of these crimes ineligible for probation, except as specified, and would specify the conditions of probation if probation is granted pursuant to those exceptions.*

*Under existing law, obscene live conduct that is performed in front of an audience or in a public place is a misdemeanor.*

*This bill would provide that any adult who promotes, uses, coerces, or employs a minor to perform sexual conduct as part of a live performance, as defined, is guilty of a felony. The term of imprisonment and amount of the fine imposed are dependent on the circumstances and motivation. Because the bill would create a new crime, it would impose a state-mandated local program.*

*The bill would make conforming changes.*

*This bill would create a civil cause of action for a person depicted in an image of child pornography to recover from the possessor, distributor, or maker of the pornography, without regard to the age of the person or when the violation of law occurred.*

*Under existing law, it is a misdemeanor or felony to unlawfully tamper or interfere with, damage, or access without authorization, any computer network, data, or system.*

*This bill would make it a felony for any person to use a computer network or system to create child pornography, as described above.*

*Under existing law, telecommunications and computer equipment that is used unlawfully is subject to seizure and forfeiture.*

*This bill would make any computer or camera equipment used in the possession, production, or distribution of child pornography, and any*

*monetary profits gained as a result thereof, subject to seizure and forfeiture.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides that a person is guilty of the crime of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image that depicts a person under 18 years of age engaged in an act of sexual conduct, as specified.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 287 is added to the Penal Code, to read:*  
2     *287. (a) (1) Every person who knowingly possesses,*  
3     *attempts to possess, or conspires to possess, keeps, displays, an*  
4     *article of child pornography is guilty of a felony punishable by*  
5     *imprisonment in the state prison for two, four or six years and a*  
6     *fine of up to twenty five thousand dollars (\$25,000). Probation*  
7     *shall not be granted, nor shall the execution or imposition of*  
8     *sentence be suspended, if the violation of this subdivision*  
9     *involved more than 50 images, or if the victim was under 14*  
10    *years of age at the time of the offense and the defendant is more*  
11    *than five years older than the victim. A sentence may be imposed*  
12    *for each image possessed, as defined in subdivision (j),*  
13    *notwithstanding any other law.*  
14    *(2) If a person convicted of violating this subdivision has*  
15    *previously been convicted of a crime listed in subdivision (e), he*  
16    *or she shall be punished by an additional three years in the state*  
17    *prison, to be served consecutively to the sentence imposed, and*  
18    *fine of up to one hundred fifty thousand dollars (\$150,000).*  
19    *Probation shall not be granted, nor shall the execution or*  
20    *imposition of sentence be suspended.*

1     (3) If a person convicted of a violating this subdivision has  
2     previously been convicted of a crime listed in subdivision (f), he  
3     or shall be punished by an additional five years in the state  
4     prison, to be served consecutively to the sentence imposed, and a  
5     fine of up to one hundred fifty thousand dollars (\$150,000).  
6     Probation shall not be granted, nor shall the execution or  
7     imposition of sentence be suspended.

8     (b) (1) Every person who knowingly imports into this state,  
9     furnishes, or gives away, or offers to import into this state,  
10    furnish, or give away, or attempts to import into this state,  
11    furnish, or give away, or conspires to import into this state,  
12    furnish, administer, or give away child pornography by any  
13    means, including, but not limited to, electronic mail; the Internet,  
14    as defined in paragraph (6) of subdivision (f) of Section 17538 of  
15    the Business and Professions Code; a commercial online service;  
16    or peer to peer file sharing, is guilty of a felony, punishable by  
17    imprisonment in the state prison for three, six or eight years and  
18    by a fine of up to one hundred fifty thousand dollars (\$150,000).  
19    Probation shall not be granted, nor shall the execution or  
20    imposition of sentence be suspended, unless in the event of an  
21    unusual case, the court finds that the interest of justice would  
22    best be served by a grant of probation. Notwithstanding that  
23    exception, probation shall not be granted, nor shall the execution  
24    or imposition of sentence be suspended, if the violation of this  
25    subdivision involved more than 50 images, or if the victim was  
26    under 14 years of age at the time of the offense and the defendant  
27    is more than five years older than the victim.

28    (2) If a person convicted of violating this subdivision has  
29    previously been convicted of a crime listed in subdivision (e), he  
30    or she shall be punished by an additional three years in the state  
31    prison, to be served consecutively to the sentence imposed.  
32    Probation shall not be granted, nor shall the execution or  
33    imposition of sentence of sentence be suspended.

34    (3) If a person convicted of violating this subdivision has  
35    previously been convicted of a crime listed in subdivision (f), he  
36    or she shall be punished by an additional five years in the state  
37    prison, to be served consecutively to the sentence imposed.  
38    Probation shall not be granted, nor shall the execution or  
39    imposition of sentence of sentence be suspended.

1     (c) (1) Every person who knowingly possesses with the intent  
2 to sell, or sells, advertises for sale, attempts to sell, or conspires  
3 to sell child pornography by any means, including, but not  
4 limited to, electronic mail, the Internet, a commercial online  
5 service, or peer to peer file sharing, is guilty of a felony,  
6 punished by imprisonment in the state prison for five, seven, or  
7 nine years and a fine of up to two hundred fifty thousand dollars  
8 (\$250,000). Probation shall not be granted, nor shall the  
9 execution or imposition of sentence be suspended.

10    (2) If a person convicted of a violating this subdivision has  
11 previously been convicted of a crime listed in subdivision (e), he  
12 or she shall be punished by an additional three years in the state  
13 prison, to be served consecutively to the sentence imposed.

14    (3) If a person convicted of violating this subdivision has  
15 previously been convicted of a crime listed in (f), he or she shall  
16 be punished by an additional five years in the state prison, to be  
17 served consecutively to the sentence imposed.

18    (d) (1) Every person who knowingly creates, produces,  
19 manufactures, develops, duplicates, prints, records, transcribes,  
20 or attempts or conspires to knowingly creates, produces,  
21 manufactures, develops, duplicates, prints, records, or transcribe  
22 child pornography by any means, including, but not limited to,  
23 electronic mail, the Internet, a commercial online service, or  
24 peer to peer file sharing, shall be punished by imprisonment in  
25 the state prison for six, 12, or 16 years and a fine of up to one  
26 million dollars (\$1,000,000). Probation shall not be granted, nor  
27 shall the execution or imposition of sentence be suspended,  
28 unless in the event of an unusual case, the court finds that the  
29 interest of justice would best be served by a grant of probation.  
30 Notwithstanding that exception, probation shall not be granted,  
31 nor shall the execution or imposition of sentence be suspended, if  
32 the violation of this subdivision involved more than 50 images, or  
33 if the victim was under 14 years of age at the time of the offense  
34 and the defendant is more than five years older than the victim.

35    (2) If the defendant's actions were motivated by commercial  
36 purposes, the penalty shall be imprisonment in the state prison  
37 for nine, 12, or 16 years and a fine of up to one million dollars  
38 (\$1,000,000) or three times the amount received as a result of the  
39 prohibited activity, whichever is greater. Probation shall not be

1 granted, nor shall the execution or imposition of sentence be  
2 suspended.

3 (3) If a minor suffers physical injury during the commission of  
4 an activity prohibited by this subdivision, he or she shall be  
5 punished by an additional five years in the state prison, to be  
6 served consecutively to the sentence imposed. Probation shall not  
7 be granted, nor shall the execution or imposition of sentence be  
8 suspended.

9 (4) If a person convicted of a violating this subdivision has  
10 was previously convicted of a crime listed in subdivision (e), he  
11 or she shall be punished by an additional three years in the state  
12 prison, to be served consecutively to the sentence imposed.  
13 Probation shall not be granted, nor shall the execution or  
14 imposition of sentence be suspended.

15 (5) If a person convicted of violating this subdivision has  
16 previously been convicted of a crime listed in (f), he or she shall  
17 be punished by an additional five years in the state prison, to be  
18 served consecutively to the sentence imposed. Probation shall not  
19 be granted, nor shall the execution or imposition of sentence be  
20 suspended.

21 (6) If a person is convicted of violating this subdivision  
22 against multiple victims, he or she shall be punished by an  
23 additional one year in the state prison for each victim. Probation  
24 shall not be granted, nor shall the execution or imposition of  
25 sentence be suspended.

26 (e) The following sections may be pled as prior convictions for  
27 purposes of the three year sentence enhancement under this  
28 section: Section 273, 273f, 273g, 286.5, 287.1, 288, 288.2, 288.5,  
29 289.6, 311.1, 311.5, 311.6, 311.7, 313.1, 315, subdivisions (d), (i)  
30 or (k) of Section 647, a misdemeanor conviction of Section 647.6,  
31 subdivision (j) of Section 653, or Section 653.2, or Section  
32 11353, 11353.1, 11353.5, 11353.6, 11353.7, 11354, 11361, or  
33 11380 of the Health and Safety Code.

34 (f) The following sections may be pled as prior convictions for  
35 purposes of the five year sentence enhancement under this  
36 section: Section 207, 209, 209.5, 220, 243.4, 261, 261.4, 261.5,  
37 262, 265, 266, 266a, 266b, 266c, 266f, 266h, 266i, 266j, 267,  
38 269, 273a, 273ab, 273d, 278, 278.5, 280, 286, 287, 288, 288.2,  
39 288.5, 288a, 289, 289.5, 289.6, 290, 289.6, 314, or 646.9, a

1 *felony conviction of Section 647.6, or Section 726 or 729 of the*  
2 *Business and Professions Code.*

3 *(g) Any person listed below who knowingly offers, provides,*  
4 *produces, or otherwise exposes or makes the minor available to*  
5 *any person, or who uses the minor, in the commission of a*  
6 *violation of this section, or who attempts or conspires to offer,*  
7 *provide, produce, or otherwise expose or make available the*  
8 *minor to any person, or to use the minor in the commission of a*  
9 *violation of this section, or who knowingly provides, or attempts*  
10 *to provide, to a minor any child pornography, shall be punished,*  
11 *in addition to any penalty provided by subdivisions (a) to (d),*  
12 *inclusive, by three years in the state prison, to be served*  
13 *consecutively to the sentence imposed. Probation shall not be*  
14 *granted, nor shall the execution or imposition of sentence of*  
15 *sentence be suspended. This subdivision applies to all of the*  
16 *following persons:*

17 *(1) A biological parent, step-parent, lawful permanent*  
18 *guardian of the minor.*

19 *(2) A temporary caretaker or child care provider.*

20 *(3) A government employee entrusted with the custody of the*  
21 *minor as a condition of his or her employment.*

22 *(h) Any person convicted of a violation of, or of a conspiracy*  
23 *to violate, subdivisions (a), (b), (c), or (d), shall receive an*  
24 *additional term as follows:*

25 *(1) If the indictment or information alleges involvement of*  
26 *between 150 and 600 images, the defendant, in addition to any*  
27 *other enhancement provided in this section, shall be punished by*  
28 *imprisonment in the state prison for an additional one, two or*  
29 *three years, to be served consecutively to all other punishments*  
30 *imposed.*

31 *(2) If the indictment or information alleges involvement of 601*  
32 *or more images, the defendant, in addition to any other*  
33 *enhancement provided in this section, shall be punished by*  
34 *imprisonment in the state prison for an additional three, four, or*  
35 *five years, to be served consecutively to all other punishments*  
36 *imposed.*

37 *(i) Any factual allegation that is the basis for any enhancement*  
38 *under this section shall be charged in the accusatory pleading*  
39 *and admitted by the defendant or found to be true by the trier of*  
40 *fact.*

1     (j) As used in this section, the following definitions apply:

2     (1) “Child pornography” means any representation of  
3 information, data, or image, including, but not limited to, any  
4 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
5 video laser disc, computer hardware, computer software,  
6 computer floppy disc, data storage media, CD-ROM, or  
7 computer-generated equipment or any other computer-generated  
8 image that contains or incorporates in any manner, any film or  
9 filmstrip, whether made or produced by electronic, mechanical,  
10 or other means, of any matter that depicts a person under 18  
11 years of age personally engaging in or personally simulating  
12 sexual conduct; or an image of a minor that has been created,  
13 adapted, or modified to appear that an identifiable minor,  
14 recognizable by the person’s face, likeness, or other  
15 distinguishing characteristic such as a unique birthmark or other  
16 recognizable feature, is engaging in sexually explicit conduct.

17     (2) “Image” means each photograph, picture, computer or  
18 computer-generated image, or any similar visual depiction. Each  
19 video, video-clip, movie, or similar recording shall be considered  
20 to have 15 images per minute.

21     (3) “Matter” means any book, magazine, newspaper, or other  
22 printed or written material, or any picture, drawing, photograph,  
23 motion picture, or other pictorial representation, or any statue or  
24 other figure, or any recording, transcription, or mechanical,  
25 chemical, or electrical reproduction, or any other article,  
26 equipment, machine, or material, any live or recorded telephone  
27 messages if transmitted, disseminated, or distributed as part of a  
28 commercial transaction, or any representation of information,  
29 data, or image, including, but not limited to, any film, filmstrip,  
30 photograph, negative, slide, photocopy, videotape, video laser  
31 disc, computer hardware, computer software, computer floppy  
32 disc, data storage media, CD-ROM, or computer-generated  
33 equipment or any other computer-generated image that contains  
34 or incorporates in any manner any film or filmstrip.

35     (4) “Sexual conduct” means any of the following, whether  
36 actual or simulated:

37     (A) Sexual intercourse, including genital-genital, oral-genital,  
38 anal-genital, or oral-anal, whether between persons of the same  
39 or opposite sex or between humans and animals.

40     (B) Penetration of the vagina or rectum by any object.



1 (C) *Masturbation for the purpose of sexual stimulation of the*  
2 *viewer.*

3 (D) *Sadomasochistic abuse for the purpose of sexual*  
4 *stimulation of the viewer.*

5 (E) *Exhibition of the genitals or the pubic or rectal area of any*  
6 *person for the purpose of sexual stimulation of the viewer.*

7 (F) *Defecation or urination for the purpose of sexual*  
8 *stimulation of the viewer.*

9 (k) *It is not necessary to prove that the matter is obscene in*  
10 *order to establish a violation of this provision.*

11 (l) *The provisions of this section do not apply to the activities*  
12 *of law enforcement and prosecuting agencies in the investigation*  
13 *and prosecution of criminal offenses; to legitimate medical,*  
14 *scientific, or educational activities; or to lawful conduct between*  
15 *spouses when one or both are under 18 years of age.*

16 (m) *It does not constitute a violation of this section for a*  
17 *telephone corporation, as defined in Section 234 of the Public*  
18 *Utilities Code, a cable television company franchised pursuant to*  
19 *Section 53066 of the Government Code, or any of its affiliates, an*  
20 *Internet service provider, or commercial online service provider,*  
21 *to carry, broadcast, or transmit messages described in this*  
22 *section or perform related activities in providing telephone,*  
23 *cable television, Internet, or commercial online services.*

24 (n) *The provisions of this section do not apply to an employee*  
25 *of a commercial film developer who is acting within the scope of*  
26 *his or her employment and in accordance with the instructions of*  
27 *his or her employer, provided that the employee has no financial*  
28 *interest in the commercial developer by which he or she is*  
29 *employed.*

30 (o) *This section does not apply to any matter that depicts a*  
31 *legally emancipated minor.*

32 (p) *This section does not apply to drawings, figurines, statues,*  
33 *or any film rated by the Motion Picture Association of America.*

34 SEC. 2. *Section 287.1 is added to the Penal Code, to read:*

35 287.1. *Every person who, with knowledge that a person is a*  
36 *minor, or who fails to exercise reasonable care in ascertaining*  
37 *the true age of a minor, knowingly promotes, employs, uses,*  
38 *persuades, induces, or coerces a minor under 18 years of age, or*  
39 *any parent or guardian of a minor under 18 years of age under*  
40 *his or her control who knowingly permits the minor, to engage in*

1 or assist others to engage in a live performance involving, sexual  
2 conduct by a minor under 18 years of age alone or with other  
3 persons or animals, is guilty of a felony and shall be punished as  
4 follows:

5 (a) If the person's actions were motivated by commercial  
6 purpose, the punishment shall be imprisonment in the state  
7 prison for five, seven or nine years and a fine of up to two  
8 hundred fifty thousand dollars (\$250,000), or three times the  
9 amount received as a result of the prohibited activity, whichever  
10 is greater. Probation shall not be granted, nor shall the  
11 execution or imposition of sentence be suspended.

12 (b) If commercial purpose is not proven as a motive, the  
13 punishment shall be imprisonment in the state prison for three,  
14 six or eight years, and a fine of up to two hundred fifty thousand  
15 dollars (\$250,000). Probation shall not be granted nor shall the  
16 execution or imposition of sentence be suspended, unless in the  
17 event of an unusual case, the court finds that the interest of  
18 justice would best be served by a grant of probation.  
19 Notwithstanding that exception, probation shall not be granted,  
20 nor shall the execution or imposition of sentence be suspended, if  
21 the victim was under 14 years of age at the time of the offense  
22 and the defendant is more than five years older than the victim.

23 (c) If a person uses force, violence, duress, menace, or fear of  
24 immediate and unlawful bodily injury on the victim or another  
25 person in order to commit a violation of this subdivision, that  
26 person shall be punished by imprisonment in the state prison for  
27 five, seven, or nine years and a fine of up to two hundred fifty  
28 thousand dollars (\$250,000). Probation shall not be granted, nor  
29 shall the execution or imposition of sentence be suspended.

30 (d) If there is more than one victim, the defendant shall receive  
31 an additional one year term for each victim, to be served  
32 consecutively to any other term of imprisonment imposed.  
33 Probation shall not be granted, nor shall the execution or  
34 imposition of sentence be suspended.

35 (e) This section does not apply to a performance of a legally  
36 emancipated child under 18 years of age.

37 SEC. 3. Section 287.2 is added to the Penal Code, to read:

38 287.2. (a) Any person depicted in an image of child  
39 pornography in violation of Section 287.5 may bring an action  
40 for recovery of damages against the possessor, creator, or

1 distributor of the pornography in any court of competent  
2 jurisdiction in the county where a criminal action is brought.

3 (b) Upon finding in favor of a plaintiff described in  
4 subdivision (a), a court shall award him or her actual damages  
5 and the cost of the suit, including reasonable attorney's fees.

6 (c) A person described in subdivision (a) shall be deemed to  
7 have sustained actual damages of no less than fifty thousand  
8 dollars (\$50,000) in value.

9 (d) Notwithstanding the provisions of Section 340.1 of the  
10 Code of Civil Procedure or any other provision of law, an action  
11 commenced under this section may be brought at any time after  
12 the right of action first accrues. An action commenced under this  
13 section shall not be time barred, and shall not be barred by the  
14 age of the person described in subdivision (a).

15 SEC. 4. Section 290 of the Penal Code is amended to read:

16 290. (a) (1) (A) Every person described in paragraph (2),  
17 for the rest of his or her life while residing in California, or while  
18 attending school or working in California, as described in  
19 subparagraph (G), shall be required to register with the chief of  
20 police of the city in which he or she is residing, or the sheriff of  
21 the county if he or she is residing in an unincorporated area or  
22 city that has no police department, and, additionally, with the  
23 chief of police of a campus of the University of California, the  
24 California State University, or community college if he or she is  
25 residing upon the campus or in any of its facilities, within five  
26 working days of coming into, or changing his or her residence  
27 within, any city, county, or city and county, or campus in which  
28 he or she temporarily resides.

29 (B) If the person who is registering has more than one  
30 residence address at which he or she regularly resides, he or she  
31 shall register in accordance with subparagraph (A) in each of the  
32 jurisdictions in which he or she regularly resides, regardless of  
33 the number of days or nights spent there. If all of the addresses  
34 are within the same jurisdiction, the person shall provide the  
35 registering authority with all of the addresses where he or she  
36 regularly resides.

37 (C) Every person described in paragraph (2), for the rest of his  
38 or her life while living as a transient in California shall be  
39 required to register, as follows:

1 (i) A transient must register, or reregister if the person has  
2 previously registered, within five working days from release  
3 from incarceration, placement or commitment, or release on  
4 probation, pursuant to paragraph (1) of subdivision (a), except  
5 that if the person previously registered as a transient less than 30  
6 days from the date of his or her release from incarceration, he or  
7 she does not need to reregister as a transient until his or her next  
8 required 30-day update of registration. If a transient is not  
9 physically present in any one jurisdiction for five consecutive  
10 working days, he or she must register in the jurisdiction in which  
11 he or she is physically present on the fifth working day following  
12 release, pursuant to paragraph (1) of subdivision (a). Beginning  
13 on or before the 30th day following initial registration upon  
14 release, a transient must reregister no less than once every 30  
15 days thereafter. A transient shall register with the chief of police  
16 of the city in which he or she is physically present within that  
17 30-day period, or the sheriff of the county if he or she is  
18 physically present in an unincorporated area or city that has no  
19 police department, and additionally, with the chief of police of a  
20 campus of the University of California, the California State  
21 University, or community college if he or she is physically  
22 present upon the campus or in any of its facilities. A transient  
23 must reregister no less than once every 30 days regardless of the  
24 length of time he or she has been physically present in the  
25 particular jurisdiction in which he or she reregisters. If a transient  
26 fails to reregister within any 30-day period, he or she may be  
27 prosecuted in any jurisdiction in which he or she is physically  
28 present.

29 (ii) A transient who moves to a residence shall have five  
30 working days within which to register at that address, in  
31 accordance with subparagraph (A) of paragraph (1) of  
32 subdivision (a). A person registered at a residence address in  
33 accordance with subparagraph (A) of paragraph (1) of  
34 subdivision (a), who becomes transient shall have five working  
35 days within which to reregister as a transient in accordance with  
36 clause (i).

37 (iii) Beginning on his or her first birthday following  
38 registration, a transient shall register annually, within five  
39 working days of his or her birthday, to update his or her  
40 registration with the entities described in clause (i). A transient

1 shall register in whichever jurisdiction he or she is physically  
2 present on that date. At the 30-day updates and the annual  
3 update, a transient shall provide current information as required  
4 on the Department of Justice annual update form, including the  
5 information described in subparagraphs (A) to (C), inclusive, of  
6 paragraph (2) of subdivision (e), and the information specified in  
7 clause (iv).

8 (iv) A transient shall, upon registration and reregistration,  
9 provide current information as required on the Department of  
10 Justice registration forms, and shall also list the places where he  
11 or she sleeps, eats, works, frequents, and engages in leisure  
12 activities. If a transient changes or adds to the places listed on the  
13 form during the 30-day period, he or she does not need to report  
14 the new place or places until the next required reregistration.

15 (v) Failure to comply with the requirement of reregistering  
16 every 30 days following initial registration pursuant to clause (i)  
17 of this subparagraph shall be punished in accordance with  
18 paragraph (6) of subdivision (g). Failure to comply with any  
19 other requirement of this section shall be punished in accordance  
20 with either paragraph (1) or (2) of subdivision (g).

21 (vi) A transient who moves out of state shall inform, in person,  
22 the chief of police in the city in which he or she is physically  
23 present, or the sheriff of the county if he or she is physically  
24 present in an unincorporated area or city that has no police  
25 department, within five working days, of his or her move out of  
26 state. The transient shall inform that registering agency of his or  
27 her planned destination, residence or transient location out of  
28 state, and any plans he or she has to return to California, if  
29 known. The law enforcement agency shall, within three days  
30 after receipt of this information, forward a copy of the change of  
31 location information to the Department of Justice. The  
32 department shall forward appropriate registration data to the law  
33 enforcement agency having local jurisdiction of the new place of  
34 residence or location.

35 (vii) For purposes of this section, “transient” means a person  
36 who has no residence. “Residence” means one or more addresses  
37 at which a person regularly resides, regardless of the number of  
38 days or nights spent there, such as a shelter or structure that can  
39 be located by a street address, including, but not limited to,

1 houses, apartment buildings, motels, hotels, homeless shelters,  
2 and recreational and other vehicles.

3 (viii) The transient registrant's duty to update his or her  
4 registration no less than every 30 days shall begin with his or her  
5 second transient update following the date this subdivision  
6 became effective.

7 (D) Beginning on his or her first birthday following  
8 registration or change of address, the person shall be required to  
9 register annually, within five working days of his or her birthday,  
10 to update his or her registration with the entities described in  
11 subparagraph (A). At the annual update, the person shall provide  
12 current information as required on the Department of Justice  
13 annual update form, including the information described in  
14 subparagraphs (A) to (C), inclusive, of paragraph (2) of  
15 subdivision (e).

16 (E) In addition, every person who has ever been adjudicated a  
17 sexually violent predator, as defined in Section 6600 of the  
18 Welfare and Institutions Code, shall, after his or her release from  
19 custody, verify his or her address no less than once every 90 days  
20 and place of employment, including the name and address of the  
21 employer, in a manner established by the Department of Justice.

22 (F) No entity shall require a person to pay a fee to register or  
23 update his or her registration pursuant to this section. The  
24 registering agency shall submit registrations, including annual  
25 updates or changes of address, directly into the Department of  
26 Justice Violent Crime Information Network (VCIN).

27 (G) Persons required to register in their state of residence who  
28 are out-of-state residents employed, or carrying on a vocation in  
29 California on a full-time or part-time basis, with or without  
30 compensation, for more than 14 days, or for an aggregate period  
31 exceeding 30 days in a calendar year, shall register in accordance  
32 with subparagraph (A). Persons described in paragraph (2) who  
33 are out-of-state residents enrolled in any educational institution  
34 in California, as defined in Section 22129 of the Education Code,  
35 on a full-time or part-time basis, shall register in accordance with  
36 subparagraph (A). The place where the out-of-state resident is  
37 located, for purposes of registration, shall be the place where the  
38 person is employed, carrying on a vocation, or attending school.  
39 The out-of-state resident subject to this subparagraph shall, in  
40 addition to the information required pursuant to subdivision (e),

1 provide the registering authority with the name of his or her place  
2 of employment or the name of the school attended in California,  
3 and his or her address or location in his or her state of residence.  
4 The registration requirement for persons subject to this  
5 subparagraph shall become operative on November 25, 2000.  
6 The terms “employed or carries on a vocation” include  
7 employment whether or not financially compensated,  
8 volunteered, or performed for government or educational benefit.

9 (2) The following persons shall be required to register  
10 pursuant to paragraph (1):

11 (A) Any person who, since July 1, 1944, has been or is  
12 hereafter convicted in any court in this state or in any federal or  
13 military court of a violation of Section 207 or 209 committed  
14 with intent to violate Section 261, 286, 288, 288a, or 289,  
15 Section 220, except assault to commit mayhem, Section 243.4,  
16 paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section  
17 261, or paragraph (1) of subdivision (a) of Section 262 involving  
18 the use of force or violence for which the person is sentenced to  
19 the state prison, Section 264.1, 266, or 266c, subdivision (b) of  
20 Section 266h, subdivision (b) of Section 266i, Section 266j, 267,  
21 269, 285, 286, 287, 287.1, 288, 288a, 288.5, ~~or 289, Section~~  
22 ~~311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3,~~  
23 ~~311.4, 311.10, 311.11, or 647.6, former Section 647a,~~  
24 subdivision (c) of Section 653f, subdivision 1 or 2 of Section  
25 314, any offense involving lewd or lascivious conduct under  
26 Section 272, or any felony violation of Section 288.2; or any  
27 statutory predecessor that includes all elements of one of the  
28 above-mentioned offenses; or any person who since that date has  
29 been or is hereafter convicted of the attempt to commit any of the  
30 above-mentioned offenses.

31 (B) Any person who, since July 1, 1944, has been or hereafter  
32 is released, discharged, or paroled from a penal institution where  
33 he or she was confined because of the commission or attempted  
34 commission of one of the offenses described in subparagraph  
35 (A).

36 (C) Any person who, since July 1, 1944, has been or hereafter  
37 is determined to be a mentally disordered sex offender under  
38 Article 1 (commencing with Section 6300) of Chapter 2 of Part 2  
39 of Division 6 of the Welfare and Institutions Code or any person  
40 who has been found guilty in the guilt phase of a trial for an

1 offense for which registration is required by this section but who  
2 has been found not guilty by reason of insanity in the sanity  
3 phase of the trial.

4 (D) (i) Any person who, since July 1, 1944, has been, or is  
5 hereafter convicted in any other court, including any state,  
6 federal, or military court, of any offense that, if committed or  
7 attempted in this state, would have been punishable as one or  
8 more of the offenses described in subparagraph (A).

9 (ii) Any person ordered by any other court, including any  
10 state, federal, or military court, to register as a sex offender for  
11 any offense, if the court found at the time of conviction or  
12 sentencing that the person committed the offense as a result of  
13 sexual compulsion or for purposes of sexual gratification.

14 (iii) Except as provided in clause (iv), any person who would  
15 be required to register while residing in the state of conviction for  
16 a sex offense committed in that state.

17 (iv) Clause (iii) shall not apply to a person required to register  
18 in the state of conviction if the conviction was for the equivalent  
19 of one of the following offenses, and the person is not subject to  
20 clause (i):

21 (I) Indecent exposure, pursuant to Section 314.

22 (II) Unlawful sexual intercourse, pursuant to Section 261.5.

23 (III) Incest, pursuant to Section 285.

24 (IV) Sodomy, pursuant to Section 286, or oral copulation,  
25 pursuant to Section 288a, provided that the offender notifies the  
26 Department of Justice that the sodomy or oral copulation  
27 conviction was for conduct between consenting adults, as  
28 described in subparagraph (F) of paragraph (2) of subdivision (a),  
29 and the department is able, upon the exercise of reasonable  
30 diligence, to verify that fact.

31 (E) Any person ordered by any court to register pursuant to  
32 this section for any offense not included specifically in this  
33 section if the court finds at the time of conviction or sentencing  
34 that the person committed the offense as a result of sexual  
35 compulsion or for purposes of sexual gratification. The court  
36 shall state on the record the reasons for its findings and the  
37 reasons for requiring registration.

38 (F) Any person required to register pursuant to any provision  
39 of this section, regardless of whether the person's conviction has  
40 been dismissed pursuant to Section 1203.4, unless the person



1 obtains a certificate of rehabilitation and is entitled to relief from  
2 registration pursuant to Section 290.5.

3 (G) (i) Notwithstanding any other subdivision, a person who  
4 was convicted before January 1, 1976, under subdivision (a) of  
5 Section 286, or Section 288a, shall not be required to register  
6 pursuant to this section for that conviction if the conviction was  
7 for conduct between consenting adults that was decriminalized  
8 by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the  
9 Statutes of 1976. The Department of Justice shall remove that  
10 person from the Sex Offender Registry, and the person is  
11 discharged from his or her duty to register pursuant to the  
12 following procedure:

13 (I) The person submits to the Department of Justice official  
14 documentary evidence, including court records or police reports,  
15 that demonstrate that the person's conviction pursuant to either of  
16 those sections was for conduct between consenting adults that  
17 was decriminalized; or

18 (II) The person submits to the department a declaration stating  
19 that the person's conviction pursuant to either of those sections  
20 was for consensual conduct between adults that has been  
21 decriminalized. The declaration shall be confidential and not a  
22 public record, and shall include the person's name, address,  
23 telephone number, date of birth, and a summary of the  
24 circumstances leading to the conviction, including the date of the  
25 conviction and county of the occurrence.

26 (III) The department shall determine whether the person's  
27 conviction was for conduct between consensual adults that has  
28 been decriminalized. If the conviction was for consensual  
29 conduct between adults that has been decriminalized, and the  
30 person has no other offenses for which he or she is required to  
31 register pursuant to this section, the department shall, within 60  
32 days of receipt of those documents, notify the person that he or  
33 she is relieved of the duty to register, and shall notify the local  
34 law enforcement agency with which the person is registered that  
35 he or she has been relieved of the duty to register. The local law  
36 enforcement agency shall remove the person's registration from  
37 its files within 30 days of receipt of notification. If the  
38 documentary or other evidence submitted is insufficient to  
39 establish the person's claim, the department shall, within 60 days  
40 of receipt of those documents, notify the person that his or her

1 claim cannot be established, and that the person shall continue to  
2 register pursuant to this section. The department shall provide,  
3 upon the person's request, any information relied upon by the  
4 department in making its determination that the person shall  
5 continue to register pursuant to this section. Any person whose  
6 claim has been denied by the department pursuant to this clause  
7 may petition the court to appeal the department's denial of the  
8 person's claim.

9 (ii) On or before July 1, 1998, the department shall make a  
10 report to the Legislature concerning the status of persons who  
11 may come under the provisions of this subparagraph, including  
12 the number of persons who were convicted before January 1,  
13 1976, under subdivision (a) of Section 286 or Section 288a and  
14 are required to register under this section, the average age of  
15 these persons, the number of these persons who have any  
16 subsequent convictions for a registerable sex offense, and the  
17 number of these persons who have sought successfully or  
18 unsuccessfully to be relieved of their duty to register under this  
19 section.

20 (b) (1) Any person who is released, discharged, or paroled  
21 from a jail, state or federal prison, school, road camp, or other  
22 institution where he or she was confined because of the  
23 commission or attempted commission of one of the offenses  
24 specified in subdivision (a) or is released from a state hospital to  
25 which he or she was committed as a mentally disordered sex  
26 offender under Article 1 (commencing with Section 6300) of  
27 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions  
28 Code, shall, prior to discharge, parole, or release, be informed of  
29 his or her duty to register under this section by the official in  
30 charge of the place of confinement or hospital, and the official  
31 shall require the person to read and sign any form that may be  
32 required by the Department of Justice, stating that the duty of the  
33 person to register under this section has been explained to the  
34 person. The official in charge of the place of confinement or  
35 hospital shall obtain the address where the person expects to  
36 reside upon his or her discharge, parole, or release and shall  
37 report the address to the Department of Justice. The official shall  
38 at the same time forward a current photograph of the person to  
39 the Department of Justice.

1 (2) The official in charge of the place of confinement or  
2 hospital shall give one copy of the form to the person and shall  
3 send one copy to the Department of Justice and one copy to the  
4 appropriate law enforcement agency or agencies having  
5 jurisdiction over the place the person expects to reside upon  
6 discharge, parole, or release. If the conviction that makes the  
7 person subject to this section is a felony conviction, the official  
8 in charge shall, not later than 45 days prior to the scheduled  
9 release of the person, send one copy to the appropriate law  
10 enforcement agency or agencies having local jurisdiction where  
11 the person expects to reside upon discharge, parole, or release;  
12 one copy to the prosecuting agency that prosecuted the person;  
13 and one copy to the Department of Justice. The official in charge  
14 of the place of confinement or hospital shall retain one copy.

15 (c) (1) Any person who is convicted in this state of the  
16 commission or attempted commission of any of the offenses  
17 specified in subdivision (a) and who is released on probation,  
18 shall, prior to release or discharge, be informed of the duty to  
19 register under this section by the probation department, and a  
20 probation officer shall require the person to read and sign any  
21 form that may be required by the Department of Justice, stating  
22 that the duty of the person to register under this section has been  
23 explained to him or her. The probation officer shall obtain the  
24 address where the person expects to reside upon release or  
25 discharge and shall report within three days the address to the  
26 Department of Justice. The probation officer shall give one copy  
27 of the form to the person, send one copy to the Department of  
28 Justice, and forward one copy to the appropriate law enforcement  
29 agency or agencies having local jurisdiction where the person  
30 expects to reside upon his or her discharge, parole, or release.

31 (2) Any person who is convicted in this state of the  
32 commission or attempted commission of any of the offenses  
33 specified in subdivision (a) and who is granted conditional  
34 release without supervised probation, or discharged upon  
35 payment of a fine, shall, prior to release or discharge, be  
36 informed of the duty to register under this section in open court  
37 by the court in which the person has been convicted, and the  
38 court shall require the person to read and sign any form that may  
39 be required by the Department of Justice, stating that the duty of  
40 the person to register under this section has been explained to

1 him or her. If the court finds that it is in the interest of the  
2 efficiency of the court, the court may assign the bailiff to require  
3 the person to read and sign forms under this section. The court  
4 shall obtain the address where the person expects to reside upon  
5 release or discharge and shall report within three days the address  
6 to the Department of Justice. The court shall give one copy of the  
7 form to the person, send one copy to the Department of Justice,  
8 and forward one copy to the appropriate law enforcement agency  
9 or agencies having local jurisdiction where the person expects to  
10 reside upon his or her discharge, parole, or release.

11 (d) (1) Any person who, on or after January 1, 1986, is  
12 discharged or paroled from the Department of ~~the Youth~~  
13 ~~Authority~~ *Corrections and Rehabilitation, Division of Juvenile*  
14 *Facilities* to the custody of which he or she was committed after  
15 having been adjudicated a ward of the juvenile court pursuant to  
16 Section 602 of the Welfare and Institutions Code because of the  
17 commission or attempted commission of any offense described in  
18 paragraph (3) shall be subject to registration under the procedures  
19 of this section.

20 (2) Any person who is discharged or paroled from a facility in  
21 another state that is equivalent to ~~the Department of the Youth~~  
22 ~~Authority~~ *that division*, to the custody of which he or she was  
23 committed because of an offense which, if committed or  
24 attempted in this state, would have been punishable as one or  
25 more of the offenses described in paragraph (3), shall be subject  
26 to registration under the procedures of this section.

27 (3) Any person described in this subdivision who committed  
28 an offense in violation of any of the following provisions shall be  
29 required to register pursuant to this section:

30 (A) Assault with intent to commit rape, sodomy, oral  
31 copulation, or any violation of Section 264.1, 288, or 289 under  
32 Section 220.

33 (B) Any offense defined in paragraph (1), (2), (3), (4), or (6)  
34 of subdivision (a) of Section 261, Section 264.1, 266c, or 267,  
35 paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of,  
36 Section 286, ~~Section 287, 287.1, 288 or 288.5~~, paragraph (1) of  
37 subdivision (b) of, or subdivision (c) or (d) of, Section 288a,  
38 subdivision (a) of Section 289, or Section 647.6.

39 (C) A violation of Section 207 or 209 committed with the  
40 intent to violate Section 261, 286, 288, 288a, or 289.

1 (4) Prior to discharge or parole from the Department of ~~the~~  
2 ~~Youth Authority~~ *Corrections and Rehabilitation*, any person who  
3 is subject to registration under this subdivision shall be informed  
4 of the duty to register under the procedures set forth in this  
5 section. ~~Department of the Youth Authority~~ officials shall  
6 transmit the required forms and information to the Department of  
7 Justice.

8 (5) All records specifically relating to the registration in the  
9 custody of the Department of Justice, law enforcement agencies,  
10 and other agencies or public officials shall be destroyed when the  
11 person who is required to register has his or her records sealed  
12 under the procedures set forth in Section 781 of the Welfare and  
13 Institutions Code. This subdivision shall not be construed as  
14 requiring the destruction of other criminal offender or juvenile  
15 records relating to the case that are maintained by the  
16 Department of Justice, law enforcement agencies, the juvenile  
17 court, or other agencies and public officials unless ordered by a  
18 court under Section 781 of the Welfare and Institutions Code.

19 (e) (1) On or after January 1, 1998, upon incarceration,  
20 placement, or commitment, or prior to release on probation, any  
21 person who is required to register under this section shall  
22 preregister. The preregistering official shall be the admitting  
23 officer at the place of incarceration, placement, or commitment,  
24 or the probation officer if the person is to be released on  
25 probation. The preregistration shall consist of all of the  
26 following:

27 (A) A preregistration statement in writing, signed by the  
28 person, giving information that shall be required by the  
29 Department of Justice.

30 (B) The fingerprints and a current photograph of the person.

31 (C) Any person who is preregistered pursuant to this  
32 subdivision is required to be preregistered only once.

33 (2) A person described in paragraph (2) of subdivision (a)  
34 shall register, or reregister if the person has previously registered,  
35 upon release from incarceration, placement, commitment, or  
36 release on probation pursuant to paragraph (1) of subdivision (a).  
37 The registration shall consist of all of the following:

38 (A) A statement in writing signed by the person, giving  
39 information as shall be required by the Department of Justice and  
40 giving the name and address of the person's employer, and the

1 address of the person's place of employment if that is different  
2 from the employer's main address.

3 (B) The fingerprints and a current photograph of the person  
4 taken by the registering official.

5 (C) The license plate number of any vehicle owned by,  
6 regularly driven by, or registered in the name of the person.

7 (D) Notice to the person that, in addition to the requirements  
8 of paragraph (4), he or she may have a duty to register in any  
9 other state where he or she may relocate.

10 (E) Copies of adequate proof of residence, which shall be  
11 limited to a California driver's license, California identification  
12 card, recent rent or utility receipt, printed personalized checks or  
13 other recent banking documents showing that person's name and  
14 address, or any other information that the registering official  
15 believes is reliable. If the person has no residence and no  
16 reasonable expectation of obtaining a residence in the foreseeable  
17 future, the person shall so advise the registering official and shall  
18 sign a statement provided by the registering official stating that  
19 fact. Upon presentation of proof of residence to the registering  
20 official or a signed statement that the person has no residence,  
21 the person shall be allowed to register. If the person claims that  
22 he or she has a residence but does not have any proof of  
23 residence, he or she shall be allowed to register but shall furnish  
24 proof of residence within 30 days of the date he or she is allowed  
25 to register.

26 (3) Within three days thereafter, the preregistering official or  
27 the registering law enforcement agency or agencies shall forward  
28 the statement, fingerprints, photograph, and vehicle license plate  
29 number, if any, to the Department of Justice.

30 (f) (1) (A) Any person who was last registered at a residence  
31 address pursuant to this section who changes his or her residence  
32 address, whether within the jurisdiction in which he or she is  
33 currently registered or to a new jurisdiction inside or outside the  
34 state, shall, in person, within five working days of the move,  
35 inform the law enforcement agency or agencies with which he or  
36 she last registered of the move, the new address or transient  
37 location, if known, and any plans he or she has to return to  
38 California.

39 (B) If the person does not know the new residence address or  
40 location at the time of the move, the registrant shall, in person,

1 within five working days of the move, inform the last registering  
2 agency or agencies that he or she is moving. The person shall  
3 later notify the last registering agency or agencies, in writing,  
4 sent by certified or registered mail, of the new address or location  
5 within five working days of moving into the new residence  
6 address or location, whether temporary or permanent.

7 (C) The law enforcement agency or agencies shall, within  
8 three working days after receipt of this information, forward a  
9 copy of the change of address information to the Department of  
10 Justice. The Department of Justice shall forward appropriate  
11 registration data to the law enforcement agency or agencies  
12 having local jurisdiction of the new place of residence .

13 (2) If the person's new address is in a Department of—the  
14 ~~Youth Authority facility or a state prison~~ *Corrections and*  
15 *Rehabilitation* or state mental institution, an official of the place  
16 of incarceration, placement, or commitment shall, within 90 days  
17 of receipt of the person, forward the registrant's change of  
18 address information to the Department of Justice. The agency  
19 need not provide a physical address for the registrant but shall  
20 indicate that he or she is serving a period of incarceration or  
21 commitment in a facility under the agency's jurisdiction. This  
22 paragraph shall apply to persons received in a Department of—the  
23 ~~Youth Authority facility or a state prison~~ *Corrections and*  
24 *Rehabilitation* or state mental institution on or after January 1,  
25 1999. The Department of Justice shall forward the change of  
26 address information to the agency with which the person last  
27 registered.

28 (3) If any person who is required to register pursuant to this  
29 section changes his or her name, the person shall inform, in  
30 person, the law enforcement agency or agencies with which he or  
31 she is currently registered within five working days. The law  
32 enforcement agency or agencies shall forward a copy of this  
33 information to the Department of Justice within three working  
34 days of its receipt.

35 (g) (1) Any person who is required to register under this  
36 section based on a misdemeanor conviction or juvenile  
37 adjudication who willfully violates any requirement of this  
38 section is guilty of a misdemeanor punishable by imprisonment  
39 in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5), (7), and (9), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.



1 (5) Any person who has ever been adjudicated a sexually  
2 violent predator, as defined in Section 6600 of the Welfare and  
3 Institutions Code, and who fails to verify his or her registration  
4 every 90 days as required pursuant to subparagraph (E) of  
5 paragraph (1) of subdivision (a), shall be punished by  
6 imprisonment in the state prison, or in a county jail not exceeding  
7 one year.

8 (6) Except as otherwise provided in paragraph (5), any person  
9 who is required to register or reregister pursuant to clause (i) of  
10 subparagraph (C) of paragraph (1) of subdivision (a) and  
11 willfully fails to comply with the requirement that he or she  
12 reregister no less than every 30 days is guilty of a misdemeanor  
13 and shall be punished by imprisonment in a county jail at least 30  
14 days, but not exceeding six months. A person who willfully fails  
15 to comply with the requirement that he or she reregister no less  
16 than every 30 days shall not be charged with this violation more  
17 often than once for a failure to register in any period of 90 days.  
18 Any person who willfully commits a third or subsequent  
19 violation of the requirements of subparagraph (C) of paragraph  
20 (1) of subdivision (a) that he or she reregister no less than every  
21 30 days shall be punished in accordance with either paragraph (1)  
22 or (2) of this subdivision.

23 (7) Any person who fails to provide proof of residence as  
24 required by subparagraph (E) of paragraph (2) of subdivision (e),  
25 regardless of the offense upon which the duty to register is based,  
26 is guilty of a misdemeanor punishable by imprisonment in a  
27 county jail not exceeding six months.

28 (8) Any person who is required to register under this section  
29 who willfully violates any requirement of this section is guilty of  
30 a continuing offense as to each requirement he or she violated.

31 (9) In addition to any other penalty imposed under this  
32 subdivision, the failure to provide information required on  
33 registration and reregistration forms of the Department of Justice,  
34 or the provision of false information, is a crime punishable by  
35 imprisonment in a county jail for a period not exceeding one  
36 year.

37 (h) Whenever any person is released on parole or probation  
38 and is required to register under this section but fails to do so  
39 within the time prescribed, the parole authority, ~~the Youthful~~  
40 ~~Offender Parole Board~~, or the court, as the case may be, shall

1 order the parole or probation of the person revoked. For purposes  
2 of this subdivision, “parole authority” has the same meaning as  
3 described in Section 3000.

4 (i) Except as otherwise provided by law, the statements,  
5 photographs, and fingerprints required by this section shall not be  
6 open to inspection by the public or by any person other than a  
7 regularly employed peace officer or other law enforcement  
8 officer.

9 (j) In any case in which a person who would be required to  
10 register pursuant to this section for a felony conviction is to be  
11 temporarily sent outside the institution where he or she is  
12 confined on any assignment within a city or county including  
13 firefighting, disaster control, or of whatever nature the  
14 assignment may be, the local law enforcement agency having  
15 jurisdiction over the place or places where the assignment shall  
16 occur shall be notified within a reasonable time prior to removal  
17 from the institution. This subdivision shall not apply to any  
18 person who is temporarily released under guard from the  
19 institution where he or she is confined.

20 (k) As used in this section, “mentally disordered sex offender”  
21 includes any person who has been determined to be a sexual  
22 psychopath or a mentally disordered sex offender under any  
23 provision which, on or before January 1, 1976, was contained in  
24 Division 6 (commencing with Section 6000) of the Welfare and  
25 Institutions Code.

26 (l) (1) Every person who, prior to January 1, 1997, is required  
27 to register under this section, shall be notified whenever he or she  
28 next reregisters of the reduction of the registration period from  
29 14 to 5 working days. This notice shall be provided in writing by  
30 the registering agency or agencies. Failure to receive this  
31 notification shall be a defense against the penalties prescribed by  
32 subdivision (g) if the person did register within 14 days.

33 (2) Every person who, as a sexually violent predator, as  
34 defined in Section 6600 of the Welfare and Institutions Code, is  
35 required to verify his or her registration every 90 days, shall be  
36 notified wherever he or she next registers of his or her increased  
37 registration obligations. This notice shall be provided in writing  
38 by the registering agency or agencies. Failure to receive this  
39 notice shall be a defense against the penalties prescribed by  
40 paragraph (5) of subdivision (g).

1 (m) The registration provisions of this section are applicable to  
2 every person described in this section, without regard to when his  
3 or her crime or crimes were committed or his or her duty to  
4 register pursuant to this section arose, and to every offense  
5 described in this section, regardless of when it was committed.

6 *SEC. 5. Section 294 of the Penal Code is amended to read:*

7 294. (a) Upon conviction of any person for a violation of  
8 Section 273a, 273d, 287, 287.1, 288.5, ~~311.2, 311.3~~, or 647.6, the  
9 court may, in addition to any other penalty or restitution fine  
10 imposed, order the defendant to pay a restitution fine based on  
11 the defendant's ability to pay not to exceed five thousand dollars  
12 (\$5,000), upon a felony conviction, or one thousand dollars  
13 (\$1,000), upon a misdemeanor conviction, to be deposited in the  
14 Restitution Fund to be transferred to the county children's trust  
15 fund for the purposes of child abuse prevention.

16 (b) Upon conviction of any person for a violation of Section  
17 261, 264.1, 285, 286, 288a, or 289 where the violation is with a  
18 minor under the age of 14 years, the court may, in addition to any  
19 other penalty or restitution fine imposed, order the defendant to  
20 pay a restitution fine based on the defendant's ability to pay not  
21 to exceed five thousand dollars (\$5,000), upon a felony  
22 conviction, or one thousand dollars (\$1,000), upon a  
23 misdemeanor conviction, to be deposited in the Restitution Fund  
24 to be transferred to the county children's trust fund for the  
25 purpose of child abuse prevention.

26 (c) If the perpetrator is a member of the immediate family of  
27 the victim, the court shall consider in its decision to impose a fine  
28 under this section any hardship that may impact the victim from  
29 the imposition of the fine.

30 (d) If the court orders a fine to be imposed pursuant to this  
31 section, the actual administrative cost of collecting that fine, not  
32 to exceed 2 percent of the total amount paid, may be paid into the  
33 general fund of the county treasury for the use and benefit of the  
34 county.

35 *SEC. 6. Section 311.1 of the Penal Code is repealed.*

36 ~~311.1. (a) Every person who knowingly sends or causes to be~~  
37 ~~sent, or brings or causes to be brought, into this state for sale or~~  
38 ~~distribution, or in this state possesses, prepares, publishes,~~  
39 ~~produces, develops, duplicates, or prints any representation of~~  
40 ~~information, data, or image, including, but not limited to, any~~

1 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
2 video laser disc, computer hardware, computer software,  
3 computer floppy disc, data storage media, CD-ROM, or  
4 computer-generated equipment or any other computer-generated  
5 image that contains or incorporates in any manner, any film or  
6 filmstrip, with intent to distribute or to exhibit to, or to exchange  
7 with, others, or who offers to distribute, distributes, or exhibits  
8 to, or exchanges with, others, any obscene matter, knowing that  
9 the matter depicts a person under the age of 18 years personally  
10 engaging in or personally simulating sexual conduct, as defined  
11 in Section 311.4, shall be punished either by imprisonment in the  
12 county jail for up to one year, by a fine not to exceed one  
13 thousand dollars (\$1,000), or by both the fine and imprisonment,  
14 or by imprisonment in the state prison, by a fine not to exceed ten  
15 thousand dollars (\$10,000), or by the fine and imprisonment.

16 (b) This section does not apply to the activities of law  
17 enforcement and prosecuting agencies in the investigation and  
18 prosecution of criminal offenses or to legitimate medical,  
19 scientific, or educational activities, or to lawful conduct between  
20 spouses.

21 (c) This section does not apply to matter which depicts a child  
22 under the age of 18, which child is legally emancipated,  
23 including lawful conduct between spouses when one or both are  
24 under the age of 18.

25 (d) It does not constitute a violation of this section for a  
26 telephone corporation, as defined by Section 234 of the Public  
27 Utilities Code, to carry or transmit messages described in this  
28 chapter or perform related activities in providing telephone  
29 services.

30 *SEC. 7. Section 311.2 of the Penal Code is amended to read:*

31 311.2. (a) Every person who knowingly sends or causes to be  
32 sent, or brings or causes to be brought, into this state for sale or  
33 distribution, or in this state possesses, prepares, publishes,  
34 produces, or prints, with intent to distribute or to exhibit to  
35 others, or who offers to distribute, distributes, or exhibits to  
36 others, any obscene matter is for a first offense, guilty of a  
37 misdemeanor. If the person has previously been convicted of any  
38 violation of this section, the court may, in addition to the  
39 punishment authorized in Section 311.9, impose a fine not  
40 exceeding fifty thousand dollars (\$50,000).

(b) ~~Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars (\$100,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both that fine and imprisonment~~ *Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in subdivision (a) above, is guilty of a felony and shall be punished by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison, and by a fine not exceeding one hundred fifty thousand dollars (\$150,000).*

(c) ~~Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange~~

1 with, a person 18 years of age or older, or who offers to  
2 distribute, distributes, or exhibits to, or exchanges with, a person  
3 18 years of age or older any matter, knowing that the matter  
4 depicts a person under the age of 18 years personally engaging in  
5 or personally simulating sexual conduct, as defined in Section  
6 311.4, is guilty of a misdemeanor and shall be punished by  
7 imprisonment in the county jail for up to one year, or by a fine  
8 not exceeding two thousand dollars (\$2,000), or by both that fine  
9 and imprisonment. It is not necessary to prove commercial  
10 consideration or that the matter is obscene in order to establish a  
11 violation of this subdivision. If a person has been previously  
12 convicted of a violation of this subdivision, he or she is guilty of  
13 a felony.

14 (d) Every person who knowingly sends or causes to be sent, or  
15 brings or causes to be brought, into this state for sale or  
16 distribution, or in this state possesses, prepares, publishes,  
17 produces, develops, duplicates, or prints any representation of  
18 information, data, or image, including, but not limited to, any  
19 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
20 video laser disc, computer hardware, computer software,  
21 computer floppy disc, data storage media, CD-ROM, or  
22 computer-generated equipment or any other computer-generated  
23 image that contains or incorporates in any manner, any film or  
24 filmstrip, with intent to distribute or exhibit to, or to exchange  
25 with, a person under 18 years of age, or who offers to distribute,  
26 distributes, or exhibits to, or exchanges with, a person under 18  
27 years of age any matter, knowing that the matter depicts a person  
28 under the age of 18 years personally engaging in or personally  
29 simulating sexual conduct, as defined in Section 311.4, is guilty  
30 of a felony. It is not necessary to prove commercial consideration  
31 or that the matter is obscene in order to establish a violation of  
32 this subdivision.

33 (e) Subdivisions (a) to (d), inclusive, do *This section does not*  
34 apply to the activities of law enforcement and prosecuting  
35 agencies in the investigation and prosecution of criminal  
36 offenses, to legitimate medical, scientific, or educational  
37 activities, or to lawful conduct between spouses.

38 (f) *This section does not apply to matter that depicts a legally*  
39 emancipated child under the age of 18 years or to lawful conduct  
40 between spouses when one or both are under the age of 18 years.

(g)

(d) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

*SEC. 8. Section 311.3 of the Penal Code is repealed.*

~~311.3.—(a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.~~

~~(b) As used in this section, “sexual conduct” means any of the following:~~

~~(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.~~

~~(2) Penetration of the vagina or rectum by any object.~~

~~(3) Masturbation for the purpose of sexual stimulation of the viewer.~~

~~(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.~~

~~(5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.~~

~~(6) Defecation or urination for the purpose of sexual stimulation of the viewer.~~

~~(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.~~

~~(d) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person has~~

1 been previously convicted of a violation of subdivision (a) or any  
2 section of this chapter, he or she shall be punished by  
3 imprisonment in the state prison.

4 (e) The provisions of this section do not apply to an employee  
5 of a commercial film developer who is acting within the scope of  
6 his or her employment and in accordance with the instructions of  
7 his or her employer, provided that the employee has no financial  
8 interest in the commercial developer by which he or she is  
9 employed.

10 (f) Subdivision (a) does not apply to matter that is unsolicited  
11 and is received without knowledge or consent through a facility,  
12 system, or network over which the person or entity has no  
13 control.

14 *SEC. 9. Section 311.4 of the Penal Code is repealed.*

15 311.4. (a) Every person who, with knowledge that a person is  
16 a minor, or who, while in possession of any facts on the basis of  
17 which he or she should reasonably know that the person is a  
18 minor, hires, employs, or uses the minor to do or assist in doing  
19 any of the acts described in Section 311.2, is, for a first offense,  
20 guilty of a misdemeanor. If the person has previously been  
21 convicted of any violation of this section, the court may, in  
22 addition to the punishment authorized in Section 311.9, impose a  
23 fine not exceeding fifty thousand dollars (\$50,000).

24 (b) Every person who, with knowledge that a person is a minor  
25 under the age of 18 years, or who, while in possession of any  
26 facts on the basis of which he or she should reasonably know that  
27 the person is a minor under the age of 18 years, knowingly  
28 promotes, employs, uses, persuades, induces, or coerces a minor  
29 under the age of 18 years, or any parent or guardian of a minor  
30 under the age of 18 years under his or her control who knowingly  
31 permits the minor, to engage in or assist others to engage in  
32 either posing or modeling alone or with others for purposes of  
33 preparing any representation of information, data, or image,  
34 including, but not limited to, any film, filmstrip, photograph,  
35 negative, slide, photocopy, videotape, video laser disc, computer  
36 hardware, computer software, computer floppy disc, data storage  
37 media, CD-ROM, or computer-generated equipment or any other  
38 computer-generated image that contains or incorporates in any  
39 manner, any film, filmstrip, or a live performance involving,  
40 sexual conduct by a minor under the age of 18 years alone or



1 with other persons or animals, for commercial purposes, is guilty  
2 of a felony and shall be punished by imprisonment in the state  
3 prison for three, six, or eight years.

4 (e) Every person who, with knowledge that a person is a minor  
5 under the age of 18 years, or who, while in possession of any  
6 facts on the basis of which he or she should reasonably know that  
7 the person is a minor under the age of 18 years, knowingly  
8 promotes, employs, uses, persuades, induces, or coerces a minor  
9 under the age of 18 years, or any parent or guardian of a minor  
10 under the age of 18 years under his or her control who knowingly  
11 permits the minor, to engage in or assist others to engage in  
12 either posing or modeling alone or with others for purposes of  
13 preparing any representation of information, data, or image,  
14 including, but not limited to, any film, filmstrip, photograph,  
15 negative, slide, photocopy, videotape, video laser disc, computer  
16 hardware, computer software, computer floppy disc, data storage  
17 media, CD-ROM, or computer-generated equipment or any other  
18 computer-generated image that contains or incorporates in any  
19 manner, any film, filmstrip, or a live performance involving,  
20 sexual conduct by a minor under the age of 18 years alone or  
21 with other persons or animals, is guilty of a felony. It is not  
22 necessary to prove commercial purposes in order to establish a  
23 violation of this subdivision.

24 (d) (1) As used in subdivisions (b) and (c), “sexual conduct”  
25 means any of the following, whether actual or simulated: sexual  
26 intercourse, oral copulation, anal intercourse, anal oral  
27 copulation, masturbation, bestiality, sexual sadism, sexual  
28 masochism, penetration of the vagina or rectum by any object in  
29 a lewd or lascivious manner, exhibition of the genitals or pubic  
30 or rectal area for the purpose of sexual stimulation of the viewer,  
31 any lewd or lascivious sexual act as defined in Section 288, or  
32 excretory functions performed in a lewd or lascivious manner,  
33 whether or not any of the above conduct is performed alone or  
34 between members of the same or opposite sex or between  
35 humans and animals. An act is simulated when it gives the  
36 appearance of being sexual conduct.

37 (2) As used in subdivisions (b) and (c), “matter” means any  
38 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
39 video laser disc, computer hardware, computer software,  
40 computer floppy disc, or any other computer-related equipment

1 or computer-generated image that contains or incorporates in any  
2 manner, any film, filmstrip, photograph, negative, slide,  
3 photocopy, videotape, or video laser disc.

4 (e) This section does not apply to a legally emancipated minor  
5 or to lawful conduct between spouses if one or both are under the  
6 age of 18.

7 (f) In every prosecution under this section involving a minor  
8 under the age of 14 years at the time of the offense, the age of the  
9 victim shall be pled and proven for the purpose of the enhanced  
10 penalty provided in Section 647.6. Failure to plead and prove that  
11 the victim was under the age of 14 years at the time of the  
12 offense is not a bar to prosecution under this section if it is  
13 proven that the victim was under the age of 18 years at the time  
14 of the offense.

15 *SEC. 10. Section 311.8 of the Penal Code is amended to*  
16 *read:*

17 311.8. (a) It shall be a defense in any prosecution for a  
18 violation of this chapter that the act charged was committed in  
19 aid of legitimate scientific or educational purposes.

20 (b) It shall be a defense in any prosecution for a violation of  
21 this chapter by a person who knowingly distributed any obscene  
22 matter by the use of telephones or telephone facilities to any  
23 person under the age of 18 years that the defendant has taken  
24 either of the following measures to restrict access to the obscene  
25 matter by persons under 18 years of age:

26 (1) Required the person receiving the obscene matter to use an  
27 authorized access or identification code, as provided by the  
28 information provider, before transmission of the obscene matter  
29 begins, where the defendant has previously issued the code by  
30 mailing it to the applicant therefor after taking reasonable  
31 measures to ascertain that the applicant was 18 years of age or  
32 older and has established a procedure to immediately cancel the  
33 code of any person after receiving notice, in writing or by  
34 telephone, that the code has been lost, stolen, or used by persons  
35 under the age of 18 years or that the code is no longer desired.

36 (2) Required payment by credit card before transmission of the  
37 matter.

38 (c) Any list of applicants or recipients compiled or maintained  
39 by an information-access service provider for purposes of

1 ~~compliance with subdivision (b) is confidential and shall not be~~  
2 ~~sold or otherwise disseminated except upon order of the court.~~

3 *SEC. 11. Section 311.9 of the Penal Code is amended to*  
4 *read:*

5 311.9. (a) Every person who violates *subdivision (a) of*  
6 *Section 311.2 or Section 311.5, except subdivision (b) of Section*  
7 ~~311.2, is punishable~~ *shall be punished* by a fine of not more than  
8 one thousand dollars (\$1,000) plus five dollars (\$5) for each  
9 additional unit of material coming within the provisions of this  
10 chapter, ~~which that~~ *that* is involved in the offense, not to exceed ten  
11 thousand dollars (\$10,000), or by imprisonment in ~~the a~~ *a* county  
12 jail for not more than six months plus one day for each additional  
13 unit of material coming within the provisions of this chapter, and  
14 ~~which that~~ *that* is involved in the offense, ~~such basic maximum and~~  
15 ~~additional days~~ not to exceed 360 days in the county jail, or by  
16 both ~~such that~~ *that* fine and imprisonment. If ~~such that~~ *that* person has  
17 previously been convicted of any offense in this chapter, or of a  
18 violation of Section 313.1, a violation of Section 311.2 or 311.5,  
19 except subdivision (b) of Section 311.2, is punishable as a felony.

20 (b) ~~Every person who violates Section 311.4 is punishable by~~  
21 ~~fine of not more than two thousand dollars (\$2,000) or by~~  
22 ~~imprisonment in the county jail for not more than one year, or by~~  
23 ~~both such fine and such imprisonment. If such person has been~~  
24 ~~previously convicted of a violation of former Section 311.3 or~~  
25 ~~Section 311.4 he is punishable by imprisonment in the state~~  
26 ~~prison.~~

27 (e) ~~Every person who violates Section 311.7 is punishable by~~  
28 ~~a~~ fine of not more than one thousand dollars (\$1,000) or by  
29 imprisonment in the county jail for not more than six months, or  
30 by both ~~such that~~ *that* fine and imprisonment. For a second and  
31 subsequent offense he shall be punished by a fine of not more  
32 than two thousand dollars (\$2,000), or by imprisonment in the  
33 county jail for not more than one year, or by both ~~such that~~ *that* fine  
34 and imprisonment. If ~~such that~~ *that* person has been twice convicted  
35 of a violation of this chapter, a violation of Section 311.7 is  
36 punishable as a felony.

37 *SEC. 12. Section 311.10 of the Penal Code is repealed.*

38 ~~311.10. (a) Any person who advertises for sale or~~  
39 ~~distribution any obscene matter knowing that it depicts a person~~  
40 ~~under the age of 18 years personally engaging in or personally~~

1 ~~simulating sexual conduct, as defined in Section 311.4, is guilty~~  
2 ~~of a felony and is punishable by imprisonment in the state prison~~  
3 ~~for two, three, or four years, or in a county jail not exceeding one~~  
4 ~~year, or by a fine not exceeding fifty thousand dollars (\$50,000),~~  
5 ~~or by both such fine and imprisonment.~~

6 ~~(b) Subdivision (a) shall not apply to the activities of law~~  
7 ~~enforcement and prosecution agencies in the investigation and~~  
8 ~~prosecution of criminal offenses.~~

9 *SEC. 13. Section 311.11 of the Penal Code is repealed.*

10 ~~311.11. (a) Every person who knowingly possesses or~~  
11 ~~controls any matter, representation of information, data, or~~  
12 ~~image, including, but not limited to, any film, filmstrip,~~  
13 ~~photograph, negative, slide, photocopy, videotape, video laser~~  
14 ~~disc, computer hardware, computer software, computer floppy~~  
15 ~~disc, data storage media, CD-ROM, or computer-generated~~  
16 ~~equipment or any other computer-generated image that contains~~  
17 ~~or incorporates in any manner, any film or filmstrip, the~~  
18 ~~production of which involves the use of a person under the age of~~  
19 ~~18 years, knowing that the matter depicts a person under the age~~  
20 ~~of 18 years personally engaging in or simulating sexual conduct,~~  
21 ~~as defined in subdivision (d) of Section 311.4, is guilty of a~~  
22 ~~public offense and shall be punished by imprisonment in the~~  
23 ~~county jail for up to one year, or by a fine not exceeding two~~  
24 ~~thousand five hundred dollars (\$2,500), or by both the fine and~~  
25 ~~imprisonment.~~

26 ~~(b) If a person has been previously convicted of a violation of~~  
27 ~~this section, or of a violation of subdivision (b) of Section 311.2,~~  
28 ~~or subdivision (b) of Section 311.4, he or she is guilty of a felony~~  
29 ~~and shall be punished by imprisonment for two, four, or six~~  
30 ~~years.~~

31 ~~(c) It is not necessary to prove that the matter is obscene in~~  
32 ~~order to establish a violation of this section.~~

33 ~~(d) This section does not apply to drawings, figurines, statues,~~  
34 ~~or any film rated by the Motion Picture Association of America,~~  
35 ~~nor does it apply to live or recorded telephone messages when~~  
36 ~~transmitted, disseminated, or distributed as part of a commercial~~  
37 ~~transaction.~~

38 *SEC. 14. Section 502 of the Penal Code is amended to read:*

39 ~~502. (a) It is the intent of the Legislature in enacting this~~  
40 ~~section to expand the degree of protection afforded to~~

1 individuals, businesses, and governmental agencies from  
2 tampering, interference, damage, and unauthorized access to  
3 lawfully created computer data and computer systems. The  
4 Legislature finds and declares that the proliferation of computer  
5 technology has resulted in a concomitant proliferation of  
6 computer crime and other forms of unauthorized access to  
7 computers, computer systems, and computer data.

8 The Legislature further finds and declares that protection of the  
9 integrity of all types and forms of lawfully created computers,  
10 computer systems, and computer data is vital to the protection of  
11 the privacy of individuals as well as to the well-being of financial  
12 institutions, business concerns, governmental agencies, and  
13 others within this state that lawfully utilize those computers,  
14 computer systems, and data.

15 (b) For the purposes of this section, the following terms have  
16 the following meanings:

17 (1) "Access" means to gain entry to, instruct, or communicate  
18 with the logical, arithmetical, or memory function resources of a  
19 computer, computer system, or computer network.

20 (2) "Computer network" means any system that provides  
21 communications between one or more computer systems and  
22 input/output devices including, but not limited to, display  
23 terminals and printers connected by telecommunication facilities.

24 (3) "Computer program or software" means a set of  
25 instructions or statements, and related data, that when executed in  
26 actual or modified form, cause a computer, computer system, or  
27 computer network to perform specified functions.

28 (4) "Computer services" includes, but is not limited to,  
29 computer time, data processing, or storage functions, or other  
30 uses of a computer, computer system, or computer network.

31 (5) "Computer system" means a device or collection of  
32 devices, including support devices and excluding calculators that  
33 are not programmable and capable of being used in conjunction  
34 with external files, one or more of which contain computer  
35 programs, electronic instructions, input data, and output data, that  
36 performs functions including, but not limited to, logic,  
37 arithmetic, data storage and retrieval, communication, and  
38 control.

39 (6) "Data" means a representation of information, knowledge,  
40 facts, concepts, computer software, computer programs or

1 instructions. Data may be in any form, in storage media, or as  
2 stored in the memory of the computer or in transit or presented  
3 on a display device.

4 (7) “Supporting documentation” includes, but is not limited to,  
5 all information, in any form, pertaining to the design,  
6 construction, classification, implementation, use, or modification  
7 of a computer, computer system, computer network, computer  
8 program, or computer software, which information is not  
9 generally available to the public and is necessary for the  
10 operation of a computer, computer system, computer network,  
11 computer program, or computer software.

12 (8) “Injury” means any alteration, deletion, damage, or  
13 destruction of a computer system, computer network, computer  
14 program, or data caused by the access, or the denial of access to  
15 legitimate users of a computer system, network, or program.

16 (9) “Victim expenditure” means any expenditure reasonably  
17 and necessarily incurred by the owner or lessee to verify that a  
18 computer system, computer network, computer program, or data  
19 was or was not altered, deleted, damaged, or destroyed by the  
20 access.

21 (10) “Computer contaminant” means any set of computer  
22 instructions that are designed to modify, damage, destroy, record,  
23 or transmit information within a computer, computer system, or  
24 computer network without the intent or permission of the owner  
25 of the information. They include, but are not limited to, a group  
26 of computer instructions commonly called viruses or worms, that  
27 are self-replicating or self-propagating and are designed to  
28 contaminate other computer programs or computer data,  
29 consume computer resources, modify, destroy, record, or  
30 transmit data, or in some other fashion usurp the normal  
31 operation of the computer, computer system, or computer  
32 network.

33 (11) “Internet domain name” means a globally unique,  
34 hierarchical reference to an Internet host or service, assigned  
35 through centralized Internet naming authorities, comprising a  
36 series of character strings separated by periods, with the  
37 rightmost character string specifying the top of the hierarchy.

38 (c) Except as provided in subdivision (h), any person who  
39 commits any of the following acts is guilty of a public offense:

1 (1) Knowingly accesses and without permission alters,  
2 damages, deletes, destroys, or otherwise uses any data, computer,  
3 computer system, or computer network in order to either (A)  
4 devise or execute any scheme or artifice to defraud, deceive, or  
5 extort, or (B) wrongfully control or obtain money, property, or  
6 data.

7 (2) Knowingly accesses and without permission takes, copies,  
8 or makes use of any data from a computer, computer system, or  
9 computer network, or takes or copies any supporting  
10 documentation, whether existing or residing internal or external  
11 to a computer, computer system, or computer network.

12 (3) Knowingly and without permission uses or causes to be  
13 used computer services.

14 (4) Knowingly accesses and without permission adds, alters,  
15 damages, deletes, or destroys any data, computer software, or  
16 computer programs which reside or exist internal or external to a  
17 computer, computer system, or computer network.

18 (5) Knowingly and without permission disrupts or causes the  
19 disruption of computer services or denies or causes the denial of  
20 computer services to an authorized user of a computer, computer  
21 system, or computer network.

22 (6) Knowingly and without permission provides or assists in  
23 providing a means of accessing a computer, computer system, or  
24 computer network in violation of this section.

25 (7) Knowingly and without permission accesses or causes to  
26 be accessed any computer, computer system, or computer  
27 network.

28 (8) Knowingly introduces any computer contaminant into any  
29 computer, computer system, or computer network.

30 (9) Knowingly and without permission uses the Internet  
31 domain name of another individual, corporation, or entity in  
32 connection with the sending of one or more electronic mail  
33 messages, and thereby damages or causes damage to a computer,  
34 computer system, or computer network.

35 *(10) Uses a computer network or computer system to commit*  
36 *an act prohibited by Section 287 or 287.1.*

37 (d) (1) Any person who violates any of the provisions of  
38 paragraph (1), (2), (4), ~~or~~ (5), *or (10)* of subdivision (c) is  
39 punishable by a fine not exceeding ten thousand dollars  
40 (\$10,000), or by imprisonment in the state prison for 16 months,

1 or two or three years, or by both that fine and imprisonment, or  
2 by a fine not exceeding five thousand dollars (\$5,000), or by  
3 imprisonment in a county jail not exceeding one year, or by both  
4 that fine and imprisonment.

5 (2) Any person who violates paragraph (3) of subdivision (c)  
6 is punishable as follows:

7 (A) For the first violation that does not result in injury, and  
8 where the value of the computer services used does not exceed  
9 four hundred dollars (\$400), by a fine not exceeding five  
10 thousand dollars (\$5,000), or by imprisonment in a county jail  
11 not exceeding one year, or by both that fine and imprisonment.

12 (B) For any violation that results in a victim expenditure in an  
13 amount greater than five thousand dollars (\$5,000) or in an  
14 injury, or if the value of the computer services used exceeds four  
15 hundred dollars (\$400), or for any second or subsequent  
16 violation, by a fine not exceeding ten thousand dollars (\$10,000),  
17 or by imprisonment in the state prison for 16 months, or two or  
18 three years, or by both that fine and imprisonment, or by a fine  
19 not exceeding five thousand dollars (\$5,000), or by imprisonment  
20 in a county jail not exceeding one year, or by both that fine and  
21 imprisonment.

22 (3) Any person who violates paragraph (6) or (7) of  
23 subdivision (c) is punishable as follows:

24 (A) For a first violation that does not result in injury, an  
25 infraction punishable by a fine not exceeding one thousand  
26 dollars (\$1,000).

27 (B) For any violation that results in a victim expenditure in an  
28 amount not greater than five thousand dollars (\$5,000), or for a  
29 second or subsequent violation, by a fine not exceeding five  
30 thousand dollars (\$5,000), or by imprisonment in a county jail  
31 not exceeding one year, or by both that fine and imprisonment.

32 (C) For any violation that results in a victim expenditure in an  
33 amount greater than five thousand dollars (\$5,000), by a fine not  
34 exceeding ten thousand dollars (\$10,000), or by imprisonment in  
35 the state prison for 16 months, or two or three years, or by both  
36 that fine and imprisonment, or by a fine not exceeding five  
37 thousand dollars (\$5,000), or by imprisonment in a county jail  
38 not exceeding one year, or by both that fine and imprisonment.

39 (4) Any person who violates paragraph (8) of subdivision (c)  
40 is punishable as follows:



1 (A) For a first violation that does not result in injury, a  
2 misdemeanor punishable by a fine not exceeding five thousand  
3 dollars (\$5,000), or by imprisonment in a county jail not  
4 exceeding one year, or by both that fine and imprisonment.

5 (B) For any violation that results in injury, or for a second or  
6 subsequent violation, by a fine not exceeding ten thousand  
7 dollars (\$10,000), or by imprisonment in a county jail not  
8 exceeding one year, or in the state prison, or by both that fine and  
9 imprisonment.

10 (5) Any person who violates paragraph (9) of subdivision (c)  
11 is punishable as follows:

12 (A) For a first violation that does not result in injury, an  
13 infraction punishable by a fine not one thousand dollars.

14 (B) For any violation that results in injury, or for a second or  
15 subsequent violation, by a fine not exceeding five thousand  
16 dollars (\$5,000), or by imprisonment in a county jail not  
17 exceeding one year, or by both that fine and imprisonment.

18 (e) (1) In addition to any other civil remedy available, the  
19 owner or lessee of the computer, computer system, computer  
20 network, computer program, or data who suffers damage or loss  
21 by reason of a violation of any of the provisions of subdivision  
22 (c) may bring a civil action against the violator for compensatory  
23 damages and injunctive relief or other equitable relief.  
24 Compensatory damages shall include any expenditure reasonably  
25 and necessarily incurred by the owner or lessee to verify that a  
26 computer system, computer network, computer program, or data  
27 was or was not altered, damaged, or deleted by the access. For  
28 the purposes of actions authorized by this subdivision, the  
29 conduct of an unemancipated minor shall be imputed to the  
30 parent or legal guardian having control or custody of the minor,  
31 pursuant to the provisions of Section 1714.1 of the Civil Code.

32 (2) In any action brought pursuant to this subdivision the court  
33 may award reasonable attorney's fees.

34 (3) A community college, state university, or academic  
35 institution accredited in this state is required to include  
36 computer-related crimes as a specific violation of college or  
37 university student conduct policies and regulations that may  
38 subject a student to disciplinary sanctions up to and including  
39 dismissal from the academic institution. This paragraph shall not

1 apply to the University of California unless the Board of Regents  
2 adopts a resolution to that effect.

3 (4) In any action brought pursuant to this subdivision for a  
4 willful violation of the provisions of subdivision (c), where it is  
5 proved by clear and convincing evidence that a defendant has  
6 been guilty of oppression, fraud, or malice as defined in  
7 subdivision (c) of Section 3294 of the Civil Code, the court may  
8 additionally award punitive or exemplary damages.

9 (5) No action may be brought pursuant to this subdivision  
10 unless it is initiated within three years of the date of the act  
11 complained of, or the date of the discovery of the damage,  
12 whichever is later.

13 (f) This section shall not be construed to preclude the  
14 applicability of any other provision of the criminal law of this  
15 state which applies or may apply to any transaction, nor shall it  
16 make illegal any employee labor relations activities that are  
17 within the scope and protection of state or federal labor laws.

18 (g) Any computer, computer system, computer network, or  
19 any software or data, owned by the defendant, that is used during  
20 the commission of any public offense described in subdivision  
21 (c) or any computer, owned by the defendant, which is used as a  
22 repository for the storage of software or data illegally obtained in  
23 violation of subdivision (c) shall be subject to forfeiture, as  
24 specified in Section 502.01.

25 (h) (1) Subdivision (c) does not apply to punish any acts  
26 which are committed by a person within the scope of his or her  
27 lawful employment. For purposes of this section, a person acts  
28 within the scope of his or her employment when he or she  
29 performs acts which are reasonably necessary to the performance  
30 of his or her work assignment.

31 (2) Paragraph (3) of subdivision (c) does not apply to penalize  
32 any acts committed by a person acting outside of his or her  
33 lawful employment, provided that the employee's activities do  
34 not cause an injury, as defined in paragraph (8) of subdivision  
35 (b), to the employer or another, or provided that the value of  
36 supplies or computer services, as defined in paragraph (4) of  
37 subdivision (b), which are used does not exceed an accumulated  
38 total of one hundred dollars (\$100).

39 (i) No activity exempted from prosecution under paragraph (2)  
40 of subdivision (h) which incidentally violates paragraph (2), (4),

1 or (7) of subdivision (c) shall be prosecuted under those  
2 paragraphs.

3 (j) For purposes of bringing a civil or a criminal action under  
4 this section, a person who causes, by any means, the access of a  
5 computer, computer system, or computer network in one  
6 jurisdiction from another jurisdiction is deemed to have  
7 personally accessed the computer, computer system, or computer  
8 network in each jurisdiction.

9 (k) In determining the terms and conditions applicable to a  
10 person convicted of a violation of this section the court shall  
11 consider the following:

12 (1) The court shall consider prohibitions on access to and use  
13 of computers.

14 (2) Except as otherwise required by law, the court shall  
15 consider alternate sentencing, including community service, if  
16 the defendant shows remorse and recognition of the wrongdoing,  
17 and an inclination not to repeat the offense.

18 *SEC. 15. Section 502.01 of the Penal Code is amended to*  
19 *read:*

20 502.01. (a) As used in this section:

21 (1) “Property subject to forfeiture” means any property of the  
22 defendant that is illegal telecommunications equipment as  
23 defined in subdivision (g) of Section 502.8, or a computer,  
24 computer system, or computer network, and any software or data  
25 residing thereon, if the telecommunications device, computer,  
26 computer system, or computer network was used in committing a  
27 violation of, or conspiracy to commit a violation of, subdivision  
28 (b) of Section 272, Section 287, 287.1, 288, 288.2, 311.1, 311.2,  
29 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,  
30 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section  
31 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of  
32 Section 484i, subdivision (c) of Section 502, or Section 502.7,  
33 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, or 646.9, or was  
34 used as a repository for the storage of software or data obtained  
35 in violation of those provisions. Forfeiture shall not be available  
36 for any property used solely in the commission of an infraction.  
37 If the defendant is a minor, it also includes property of the parent  
38 or guardian of the defendant. *With respect to violations of Section*  
39 *287 or 287.1, “property subject to forfeiture” also includes any*  
40 *camera or digital photography equipment that was used in the*

1 *commission of the prohibited acts, and any cash profits derived*  
2 *therefrom.*

3 (2) “Sentencing court” means the court sentencing a person  
4 found guilty of violating or conspiring to commit a violation of  
5 ~~subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,~~  
6 ~~311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,~~  
7 ~~476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section~~  
8 ~~484e, subdivision (d) of Section 484e, subdivision (a) of Section~~  
9 ~~484f, subdivision (b) or (c) of Section 484i, subdivision (c) of~~  
10 ~~Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e,~~  
11 ~~593d, 593e, or 646.9~~ *any of the provisions listed in paragraph*  
12 *(1), or, in the case of a minor, found to be a person described in*  
13 *Section 602 of the Welfare and Institutions Code because of a*  
14 *violation of those provisions, the juvenile court.*

15 (3) “Interest” means any property interest in the property  
16 subject to forfeiture.

17 (4) “Security interest” means an interest that is a lien,  
18 mortgage, security interest, or interest under a conditional sales  
19 contract.

20 (5) “Value” has the following meanings:

21 (A) When counterfeit items of computer software are  
22 manufactured or possessed for sale, the “value” of those items  
23 shall be equivalent to the retail price or fair market price of the  
24 true items that are counterfeited.

25 (B) When counterfeited but unassembled components of  
26 computer software packages are recovered, including, but not  
27 limited to, counterfeited computer diskettes, instruction manuals,  
28 or licensing envelopes, the “value” of those components of  
29 computer software packages shall be equivalent to the retail price  
30 or fair market price of the number of completed computer  
31 software packages that could have been made from those  
32 components.

33 (b) The sentencing court shall, upon petition by the  
34 prosecuting attorney, at any time following sentencing, or by  
35 agreement of all parties, at the time of sentencing, conduct a  
36 hearing to determine whether any property or property interest is  
37 subject to forfeiture under this section. At the forfeiture hearing,  
38 the prosecuting attorney shall have the burden of establishing, by  
39 a preponderance of the evidence, that the property or property  
40 interests are subject to forfeiture. The prosecuting attorney may

1 retain seized property that may be subject to forfeiture until the  
2 sentencing hearing.

3 (c) Prior to the commencement of a forfeiture proceeding, the  
4 law enforcement agency seizing the property subject to forfeiture  
5 shall make an investigation as to any person other than the  
6 defendant who may have an interest in it. At least 30 days before  
7 the hearing to determine whether the property should be  
8 forfeited, the prosecuting agency shall send notice of the hearing  
9 to any person who may have an interest in the property that arose  
10 before the seizure.

11 A person claiming an interest in the property shall file a motion  
12 for the redemption of that interest at least 10 days before the  
13 hearing on forfeiture, and shall send a copy of the motion to the  
14 prosecuting agency and to the probation department.

15 If a motion to redeem an interest has been filed, the sentencing  
16 court shall hold a hearing to identify all persons who possess  
17 valid interests in the property. No person shall hold a valid  
18 interest in the property if, by a preponderance of the evidence,  
19 the prosecuting agency shows that the person knew or should  
20 have known that the property was being used in violation of, or  
21 conspiracy to commit a violation of, subdivision (b) of Section  
22 272, Section 287, 287.1, 288, 288.2, 311.1, 311.2, 311.3, 311.4,  
23 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5,  
24 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision  
25 (a) of Section 484f, subdivision (b) or (c) of Section 484i,  
26 subdivision (c) of Section 502, or Section 502.7, 502.8, 529,  
27 529a, 530.5, 537e, 593d, 593e, or 646.9, and that the person did  
28 not take reasonable steps to prevent that use, or if the interest is a  
29 security interest, the person knew or should have known at the  
30 time that the security interest was created that the property would  
31 be used for a violation.

32 (d) If the sentencing court finds that a person holds a valid  
33 interest in the property, the following provisions shall apply:

34 (1) The court shall determine the value of the property.

35 (2) The court shall determine the value of each valid interest in  
36 the property.

37 (3) If the value of the property is greater than the value of the  
38 interest, the holder of the interest shall be entitled to ownership  
39 of the property upon paying the court the difference between the  
40 value of the property and the value of the valid interest.

1 If the holder of the interest declines to pay the amount  
2 determined under paragraph (2), the court may order the property  
3 sold and designate the prosecutor or any other agency to sell the  
4 property. The designated agency shall be entitled to seize the  
5 property and the holder of the interest shall forward any  
6 documentation underlying the interest, including any ownership  
7 certificates for that property, to the designated agency. The  
8 designated agency shall sell the property and pay the owner of  
9 the interest the proceeds, up to the value of that interest.

10 (4) If the value of the property is less than the value of the  
11 interest, the designated agency shall sell the property and pay the  
12 owner of the interest the proceeds, up to the value of that interest.

13 (e) If the defendant was a minor at the time of the offense, this  
14 subdivision shall apply to property subject to forfeiture that is the  
15 property of the parent or guardian of the minor.

16 (1) The prosecuting agency shall notify the parent or guardian  
17 of the forfeiture hearing at least 30 days before the date set for  
18 the hearing.

19 (2) The computer or telecommunications device shall not be  
20 subject to forfeiture if the parent or guardian files a signed  
21 statement with the court at least 10 days before the date set for  
22 the hearing that the minor shall not have access to any computer  
23 or telecommunications device owned by the parent or guardian  
24 for two years after the date on which the minor is sentenced.

25 (3) If the minor is convicted of a violation of Section 287,  
26 287.1, 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,  
27 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section  
28 484e, subdivision (d) of Section 484e, subdivision (a) of Section  
29 484f, subdivision (b) of Section 484i, subdivision (c) of Section  
30 502, or Section 502.7, 502.8, 529, 529a, or 530.5, within two  
31 years after the date on which the minor is sentenced, and the  
32 violation involves a computer or telecommunications device  
33 owned by the parent or guardian, the original property subject to  
34 forfeiture, and the property involved in the new offense, shall be  
35 subject to forfeiture notwithstanding paragraph (2).

36 (4) Notwithstanding paragraph (1), (2), or (3), or any other  
37 provision of this chapter, if a minor's parent or guardian makes  
38 full restitution to the victim of a crime enumerated in this chapter  
39 in an amount or manner determined by the court, the forfeiture  
40 provisions of this chapter do not apply to the property of that

1 parent or guardian if the property was located in the family's  
2 primary residence during the commission of the crime.

3 (f) Notwithstanding any other provision of this chapter, the  
4 court may exercise its discretion to deny forfeiture where the  
5 court finds that the convicted defendant, or minor adjudicated to  
6 come within the jurisdiction of the juvenile court, is not likely to  
7 use the property otherwise subject to forfeiture for future illegal  
8 acts.

9 (g) If the defendant is found to have the only valid interest in  
10 the property subject to forfeiture, it shall be distributed as  
11 follows:

12 (1) First, to the victim, if the victim elects to take the property  
13 as full or partial restitution for injury, victim expenditures, or  
14 compensatory damages, as defined in paragraph (1) of  
15 subdivision (e) of Section 502. If the victim elects to receive the  
16 property under this paragraph, the value of the property shall be  
17 determined by the court and that amount shall be credited against  
18 the restitution owed by the defendant. The victim shall not be  
19 penalized for electing not to accept the forfeited property in lieu  
20 of full or partial restitution.

21 (2) Second, at the discretion of the court, to one or more of the  
22 following agencies or entities:

23 (A) The prosecuting agency.

24 (B) The public entity of which the prosecuting agency is a  
25 part.

26 (C) The public entity whose officers or employees conducted  
27 the investigation resulting in forfeiture.

28 (D) Other state and local public entities, including school  
29 districts.

30 (E) Nonprofit charitable organizations.

31 (h) If the property is to be sold, the court may designate the  
32 prosecuting agency or any other agency to sell the property at  
33 auction. The proceeds of the sale shall be distributed by the court  
34 as follows:

35 (1) To the bona fide or innocent purchaser or encumbrancer,  
36 conditional sales vendor, or mortgagee of the property up to the  
37 amount of his or her interest in the property, if the court orders a  
38 distribution to that person.

39 (2) The balance, if any, to be retained by the court, subject to  
40 the provisions for distribution under subdivision (g).

1     *SEC. 16. Section 647.6 of the Penal Code is amended to*  
2     *read:*

3     647.6. (a) Every person who annoys or molests any child  
4     under the age of 18 shall be punished by a fine not exceeding one  
5     thousand dollars (\$1,000), by imprisonment in a county jail not  
6     exceeding one year, or by both the fine and imprisonment.

7     (b) Every person who violates this section after having  
8     entered, without consent, an inhabited dwelling house, or trailer  
9     coach as defined in Section 635 of the Vehicle Code, or the  
10    inhabited portion of any other building, shall be punished by  
11    imprisonment in the state prison, or in a county jail not exceeding  
12    one year.

13    (c) (1) Every person who violates this section shall be  
14    punished upon the second and each subsequent conviction by  
15    imprisonment in the state prison.

16    (2) Every person who violates this section after a previous  
17    felony conviction under Section 261, 264.1, 269, 285, 286, 287,  
18    287.1, 288a, 288.5, or 289, any of which involved a minor under  
19    the age of 16 years, or a previous felony conviction under this  
20    section, a conviction under Section 288, or a felony conviction  
21    under Section 311.4 involving a minor under the age of 14 years  
22    shall be punished by imprisonment in the state prison for two,  
23    four, or six years.

24    (d) (1) In any case in which a person is convicted of violating  
25    this section and probation is granted, the court shall require  
26    counseling as a condition of probation, unless the court makes a  
27    written statement in the court record, that counseling would be  
28    inappropriate or ineffective.

29    (2) In any case in which a person is convicted of violating this  
30    section, and as a condition of probation, the court prohibits the  
31    defendant from having contact with the victim, the court order  
32    prohibiting contact shall not be modified except upon the request  
33    of the victim and a finding by the court that the modification is in  
34    the best interest of the victim. As used in this paragraph, "contact  
35    with the victim" includes all physical contact, being in the  
36    presence of the victim, communication by any means, any  
37    communication by a third party acting on behalf of the defendant,  
38    and any gifts.

39    *SEC. 17. Section 1054.10 of the Penal Code is amended to*  
40    *read:*



1 1054.10. (a) ~~Except as provided in subdivision (b), no~~  
2 ~~attorney may disclose or permit to be disclosed to a defendant,~~  
3 ~~members of the defendant's family, or anyone else copies of~~  
4 ~~child pornography evidence.~~ *An attorney employed to defend an*  
5 *individual accused of any violation of Section 287.5 or an*  
6 *investigator or other expert retained by the defense, may be*  
7 *allowed to view the child pornography in the possession of law*  
8 *enforcement that will be offered as evidence against the accused.*  
9 *No attorney may be allowed to remove the child pornography, or*  
10 *copies of the child pornography, unless specifically permitted to*  
11 *do so by the court after a hearing and a showing of good cause.*

12 (b) ~~Notwithstanding subdivision (a), an attorney may disclose~~  
13 ~~or permit to be disclosed copies of child pornography evidence to~~  
14 ~~persons employed by the attorney or to persons appointed by the~~  
15 ~~court to assist in the preparation of a defendant's case if that~~  
16 ~~disclosure is required for that preparation. Persons provided this~~  
17 ~~material by an attorney shall be informed by the attorney that~~  
18 ~~further dissemination of the material, except as provided by this~~  
19 ~~section, is prohibited.~~ *Any copies of child pornography provided*  
20 *by law enforcement to the attorney employed to defend an*  
21 *individual accused of any violation of Section 287.5, or an*  
22 *investigator or other expert retained by the defense, shall sign a*  
23 *receipt for any copies of child pornography released to them. If*  
24 *the court orders the child pornography destroyed at the close of*  
25 *the case, the court may order the defense to also return its copies*  
26 *to law enforcement for destruction.*

27 (c) *An attorney may disclose or permit to be disclosed copies*  
28 *of child pornography evidence to persons employed by the*  
29 *attorney or to persons appointed by the court to assist in the*  
30 *preparation of a defendant's case if that disclosure is required*  
31 *for that preparation. Persons provided this material by an*  
32 *attorney shall be informed by the attorney that further*  
33 *dissemination of the material, except as provided by this section,*  
34 *is prohibited.*

35 SEC. 18. *Section 1203.065 of the Penal Code is amended to*  
36 *read:*

37 1203.065. (a) *Notwithstanding any other law, probation shall*  
38 *not be granted to, nor shall the execution or imposition of*  
39 *sentence be suspended for, any person who is convicted of*  
40 *violating paragraph (2) of subdivision (a) of Section 261, Section*

1 264.1, 266h, 266i, or 266j, *paragraphs (2) or (3) of subdivision*  
2 *(a) or (b) of Section 287, subdivision (c) of Section 287,*  
3 *paragraphs (2) to (6), inclusive, of subdivision (d) of Section 287,*  
4 *subdivision (a) (c) or (d) of Section 287.1, subdivision (a) of*  
5 *Section 289, or of committing sodomy or oral copulation in*  
6 *violation of Section 286 or 288a by force, violence, duress,*  
7 *menace, or fear of immediate and unlawful bodily injury on the*  
8 *victim or another person, or of violating subdivision (e) of*  
9 *Section 311.4.*

10 (b) Except in unusual cases where the interests of justice  
11 would best be served if the person is granted probation, probation  
12 shall not be granted to any person who is convicted of a violation  
13 of paragraph (7) of subdivision (a) of Section 261, subdivision  
14 (k) of Section 286, *paragraph (1) of subdivision (b) or (d) of*  
15 *Section 287, subdivision (b) of Section 287.1, subdivision (k) of*  
16 *Section 288a, or Section 220 for assault with intent to commit*  
17 *any of the following: rape, sodomy, oral copulation, or any*  
18 *violation of Section 264.1, subdivision (b) of Section 288, or*  
19 *Section 289.*

20 ~~When 289.~~ When probation is granted, the court shall specify  
21 on the record and shall enter on the minutes the circumstances  
22 indicating that the interests of justice would best be served by the  
23 disposition.

24 (c) *Notwithstanding Section 1203 or any other law, probation*  
25 *shall not be granted to, nor shall the execution or imposition of*  
26 *sentence be suspended for, nor shall a finding bringing the*  
27 *defendant within the provisions of this section be stricken*  
28 *pursuant to Section 1385 for, any of the following persons, where*  
29 *the factual allegations of ineligibility are alleged in the*  
30 *accusatory pleading and admitted by the defendant or found to*  
31 *be true by the trier of fact:*

32 (1) *A person who is convicted of violating Section 287 where*  
33 *the offense involved more than 50 images.*

34 (2) *A person who is convicted of violating Section 287 or*  
35 *287.1 where the victim is a child under 14 years of age and the*  
36 *defendant is more than five years older than the victim at the*  
37 *time of the offense.*

38 (d) *When probation is granted for any violation of Section 287*  
39 *or 287.1, the court shall, in addition to any other conditions of*  
40 *probation, impose all of the following conditions:*

1     (1) A probationary period of not less than 60 months.

2     (2) Incarceration in a county jail for at least 180 days.

3     (3) In addition to any fine imposed pursuant to Section 1202.4,  
4 a fine of not less than one thousand dollars (\$1,000) and not  
5 more than ten thousand dollars (\$10,000), to be deposited in the  
6 Restitution Fund, to be used for restitution to the victim or to  
7 other victims of those crimes.

8     (4) The defendant shall participate in a recognized treatment  
9 program, as defined in Section 1203.066, designed to deal with  
10 child molestation, as soon as possible after sentencing. Failure to  
11 successfully complete that program shall result in a violation of  
12 the terms of probation and the mandatory imposition of any  
13 suspended sentence. If the court finds that rehabilitation is not  
14 feasible or that the defendant is not amenable to undergoing  
15 treatment, then probation may be denied.

16     (5) Restricted access to, or monitoring by a probation officer  
17 of, the defendant's computer usage or photographic equipment,  
18 unless the court finds this condition contrary to the interest of  
19 justice.

20     (6) An order prohibiting contact with minors. If the court finds  
21 that the defendant's children are at risk, the order may include  
22 prohibition of contact with, or supervised contact with, his or her  
23 children.

24     SEC. 19. Section 1203.066 of the Penal Code is amended to  
25 read:

26     1203.066. (a) Notwithstanding Section 1203 or any other  
27 law, probation shall not be granted to, nor shall the execution or  
28 imposition of sentence be suspended for, nor shall a finding  
29 bringing the defendant within the provisions of this section be  
30 stricken pursuant to Section 1385 for, any of the following  
31 persons:

32     (1) A person who is convicted of violating Section 287, 287.1,  
33 288, or 288.5 when the act is committed by the use of force,  
34 violence, duress, menace, or fear of immediate and unlawful  
35 bodily injury on the victim or another person.

36     (2) A person who caused bodily injury on the child victim in  
37 committing a violation of Section 287, 287.1, 288, or 288.5.

38     (3) A person who is convicted of a violation of Section 288 or  
39 288.5 and who was a stranger to the child victim or befriended  
40 the child victim for the purpose of committing an act in violation

1 of Section 287, 287.1, 288, or 288.5, unless the defendant  
2 honestly and reasonably believed the victim was 14 years of age  
3 or older.

4 (4) A person who used a weapon during the commission of a  
5 violation of Section 287, 287.1, 288, or 288.5.

6 (5) A person who is convicted of committing a violation of  
7 Section 287, 287.1, 288, or 288.5 and who has been previously  
8 convicted of a violation of Section 261, 262, 264.1, 266, 266c,  
9 267, 285, 286, 287, 287.1, 288, 288.5, 288a, or 289, or of  
10 assaulting another person with intent to commit a crime specified  
11 in this paragraph in violation of Section 220, or who has been  
12 previously convicted in another state of an offense which, if  
13 committed or attempted in this state, would constitute an offense  
14 enumerated in this paragraph.

15 (6) A person who violated Section 287, 287.1, 288, or 288.5  
16 while kidnapping the child victim in violation of Section 207,  
17 209, or 209.5.

18 (7) A person who is convicted of committing a violation of  
19 Section 287, 287.1, 288, or 288.5 against more than one victim.

20 (8) A person who, in violating Section 287, 287.1, 288, or  
21 288.5, has substantial sexual conduct with a victim who is under  
22 14 years of age.

23 (9) A person who, in violating Section 288 or 288.5, used  
24 obscene matter, as defined in Section 311, or matter, as defined  
25 in Section 311, depicting sexual conduct, as defined in Section  
26 311.3.

27 (b) “Substantial sexual conduct” means penetration of the  
28 vagina or rectum of either the victim or the offender by the penis  
29 of the other or by any foreign object, oral copulation, or  
30 masturbation of either the victim or the offender.

31 (c) (1) Except for a violation of subdivision (b) of Section  
32 288, this section shall only apply if the existence of any fact  
33 required in subdivision (a) is alleged in the accusatory pleading  
34 and is either admitted by the defendant in open court, or found to  
35 be true by the trier of fact.

36 (2) For the existence of any fact under paragraph (7) of  
37 subdivision (a), the allegation must be made pursuant to this  
38 section.

39 (d) (1) If a person is convicted of a violation of Section 287,  
40 287.1, 288, or 288.5, and the factors listed in subdivision (a) are

1 not pled or proven, probation may be granted only if the  
2 following terms and conditions are met:

3 (A) If the defendant is a member of the victim's household,  
4 the court finds that probation is in the best interest of the child  
5 victim.

6 (B) The court finds that rehabilitation of the defendant is  
7 feasible and that the defendant is amenable to undergoing  
8 treatment, and the defendant is placed in a recognized treatment  
9 program designed to deal with child molestation immediately  
10 after the grant of probation or the suspension of execution or  
11 imposition of sentence.

12 (C) If the defendant is a member of the victim's household,  
13 probation shall not be granted unless the defendant is removed  
14 from the household of the victim until the court determines that  
15 the best interests of the victim would be served by his or her  
16 return. While removed from the household, the court shall  
17 prohibit contact by the defendant with the victim, with the  
18 exception that the court may permit supervised contact, upon the  
19 request of the director of the court-ordered supervised treatment  
20 program, and with the agreement of the victim and the victim's  
21 parent or legal guardian, other than the defendant.

22 (D) The court finds that there is no threat of physical harm to  
23 the victim if probation is granted.

24 (2) The court shall state its reasons on the record for whatever  
25 sentence it imposes on the defendant.

26 (3) The court shall order the psychiatrist or psychologist who  
27 is appointed pursuant to Section 288.1 to include a consideration  
28 of the factors specified in subparagraphs (A), (B), and (C) in  
29 making his or her report to the court.

30 (4) The court shall order the defendant to comply with all  
31 probation requirements, including the requirements to attend  
32 counseling, keep all program appointments, and pay program  
33 fees based upon ability to pay.

34 (5) No victim shall be compelled to participate in a program or  
35 counseling, and no program may condition a defendant's  
36 enrollment on participation by the victim.

37 (e) As used in subdivision (d), the following definitions apply:

38 (1) "Contact with the victim" includes all physical contact,  
39 being in the presence of the victim, communicating by any

1 means, including by a third party acting on behalf of the  
2 defendant, or sending any gifts.

3 (2) “Recognized treatment program” means a program that  
4 consists of the following components:

5 (A) Substantial expertise in the treatment of child sexual  
6 abuse.

7 (B) A treatment regimen designed to specifically address the  
8 offense.

9 (C) The ability to serve indigent clients.

10 (D) Adequate reporting requirements to ensure that all persons  
11 who, after being ordered to attend and complete a program, may  
12 be identified for either failure to enroll in, or failure to  
13 successfully complete, the program, or for the successful  
14 completion of the program as ordered. The program shall notify  
15 the court and the probation department, in writing, within the  
16 period of time and in the manner specified by the court of any  
17 person who fails to complete the program. Notification shall be  
18 given if the program determines that the defendant is performing  
19 unsatisfactorily or if the defendant is not benefiting from the  
20 education, treatment, or counseling.

21 *SEC. 20. Section 1203.067 of the Penal Code is amended to*  
22 *read:*

23 1203.067. (a) Notwithstanding any other law, before  
24 probation may be granted to any person convicted of a felony  
25 specified in Section 261, 262, 264.1, 286, 287, 287.1, 288, 288a,  
26 or 289, who is eligible for probation, the court shall do all of the  
27 following:

28 (1) Order the defendant evaluated pursuant to Section 1203.03,  
29 or similar evaluation by the county probation department.

30 (2) Conduct a hearing at the time of sentencing to determine if  
31 probation of the defendant would pose a threat to the victim. The  
32 victim shall be notified of the hearing by the prosecuting attorney  
33 and given an opportunity to address the court.

34 (3) Order any psychiatrist or psychologist appointed pursuant  
35 to Section 288.1 to include a consideration of the threat to the  
36 victim and the defendant’s potential for positive response to  
37 treatment in making his or her report to the court. Nothing in this  
38 section shall be construed to require the court to order an  
39 examination of the victim.

1 (b) If a defendant is granted probation pursuant to subdivision  
2 (a), the court shall order the defendant to be placed in an  
3 appropriate treatment program designed to deal with child  
4 molestation or sexual offenders, if an appropriate program is  
5 available in the county.

6 (c) Any defendant ordered to be placed in a treatment program  
7 pursuant to subdivision (b) shall be responsible for paying the  
8 expense of his or her participation in the treatment program as  
9 determined by the court. The court shall take into consideration  
10 the ability of the defendant to pay, and no defendant shall be  
11 denied probation because of his or her inability to pay.

12 *SEC. 21. Section 4852.03 of the Penal Code is amended to*  
13 *read:*

14 4852.03. (a) The period of rehabilitation shall begin to run  
15 upon the discharge of the petitioner from custody due to his or  
16 her completion of the term to which he or she was sentenced or  
17 upon his or her release on parole or probation, whichever is  
18 sooner. For purposes of this chapter, the period of rehabilitation  
19 shall constitute five years' residence in this state, plus a period of  
20 time determined by the following rules:

21 (1) To the five years there shall be added four years in the case  
22 of any person convicted of violating Section 187, 209, 219, 4500  
23 or 12310 of this code, or subdivision (a) of Section 1672 of the  
24 Military and Veterans Code, or of committing any other offense  
25 ~~which~~ *that* carries a life sentence.

26 (2) To the five years there shall be added five years in the case  
27 of any person convicted of committing any offense or attempted  
28 offense for which sex offender registration is required pursuant to  
29 Section 290, ~~except for convictions for violations of subdivision~~  
30 ~~(b), (c), or (d) of Section 311.2, or of Section 311.3, 311.10, or~~  
31 ~~314. For those convictions, two years shall be added to the five~~  
32 ~~years imposed by this section.~~

33 (3) To the five years there shall be added two years in the case  
34 of any person convicted of committing any offense that is not  
35 listed in paragraph (1) or paragraph (2) and that does not carry a  
36 life sentence.

37 (4) The trial court hearing the application for the certificate of  
38 rehabilitation may, if the defendant was ordered to serve  
39 consecutive sentences, order that his or her statutory period of  
40 rehabilitation be extended for an additional period of time which

1 when combined with the time already served will not exceed the  
2 period prescribed by statute for the sum of the maximum  
3 penalties for all the crimes.

4 (5) Any person who was discharged after completion of his or  
5 her term or was released on parole before May 13, 1943, is not  
6 subject to the periods of rehabilitation set forth in these rules.

7 (b) Unless and until the period of rehabilitation, as stipulated  
8 in this section, has passed, the petitioner shall be ineligible to file  
9 his or her petition for a certificate of rehabilitation with the court.  
10 Any certificate of rehabilitation that is issued and under which  
11 the petitioner has not fulfilled the requirements of this chapter  
12 shall be void.

13 (c) A change of residence within this state does not interrupt  
14 the period of rehabilitation prescribed by this section.

15 *SEC. 22. Section 11165.1 of the Penal Code is amended to*  
16 *read:*

17 11165.1. As used in this article, “sexual abuse” means sexual  
18 assault or sexual exploitation as defined by the following:

19 (a) “Sexual assault” means conduct in violation of one or more  
20 of the following sections: Section 261 (rape), subdivision (d) of  
21 Section 261.5 (statutory rape), 264.1 (rape in concert), 285  
22 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of  
23 subdivision (c) of Section 288 (lewd or lascivious acts upon a  
24 child), 288a (oral copulation), 289 (sexual penetration), or 647.6  
25 (child molestation).

26 (b) Conduct described as “sexual assault” includes, but is not  
27 limited to, all of the following:

28 (1) Any penetration, however slight, of the vagina or anal  
29 opening of one person by the penis of another person, whether or  
30 not there is the emission of semen.

31 (2) Any sexual contact between the genitals or anal opening of  
32 one person and the mouth or tongue of another person.

33 (3) Any intrusion by one person into the genitals or anal  
34 opening of another person, including the use of any object for  
35 this purpose, except that, it does not include acts performed for a  
36 valid medical purpose.

37 (4) The intentional touching of the genitals or intimate parts  
38 (including the breasts, genital area, groin, inner thighs, and  
39 buttocks) or the clothing covering them, of a child, or of the  
40 perpetrator by a child, for purposes of sexual arousal or



1 gratification, except that, it does not include acts which may  
2 reasonably be construed to be normal caretaker responsibilities;  
3 interactions with, or demonstrations of affection for, the child; or  
4 acts performed for a valid medical purpose.

5 (5) The intentional masturbation of the perpetrator's genitals  
6 in the presence of a child.

7 (c) "Sexual exploitation" refers to any of the following:

8 (1) Conduct involving matter depicting a minor engaged in  
9 ~~obscene acts in violation of Section 311.2 (preparing, selling, or~~  
10 ~~distributing obscene matter)~~ or subdivision (a) of Section 311.4  
11 ~~(employment of minor to perform obscene acts)~~ *sexual conduct,*  
12 *as defined in paragraph (4) of subdivision (j) of Section 287.*

13 (2) Any person who knowingly promotes, aids, or assists,  
14 employs, uses, persuades, induces, or coerces a child, or any  
15 person responsible for a child's welfare, who knowingly permits  
16 or encourages a child to engage in, or assist others to engage in,  
17 prostitution or a live performance involving ~~obscene~~ sexual  
18 ~~conduct, or to either pose or model alone or with others for~~  
19 ~~purposes of preparing a film, photograph, negative, slide,~~  
20 ~~drawing, painting, or other pictorial depiction, involving obscene~~  
21 ~~sexual conduct in violation of Section 287.1.~~ For the purpose of  
22 this section, "person responsible for a child's welfare" means a  
23 parent, guardian, foster parent, or a licensed administrator or  
24 employee of a public or private residential home, residential  
25 school, or other residential institution.

26 ~~(3) Any person who depicts a child in, or who knowingly~~  
27 ~~develops, duplicates, prints, or exchanges, any film, photograph,~~  
28 ~~video tape, negative, or slide in which a child is engaged in an act~~  
29 ~~of obscene sexual conduct, except for those activities by law~~  
30 ~~enforcement and prosecution agencies and other persons~~  
31 ~~described in subdivisions (c) and (e) of Section 311.3.~~

32 *SEC. 23. No reimbursement is required by this act pursuant*  
33 *to Section 6 of Article XIII B of the California Constitution*  
34 *because the only costs that may be incurred by a local agency or*  
35 *school district will be incurred because this act creates a new*  
36 *crime or infraction, eliminates a crime or infraction, or changes*  
37 *the penalty for a crime or infraction, within the meaning of*  
38 *Section 17556 of the Government Code, or changes the definition*  
39 *of a crime within the meaning of Section 6 of Article XIII B of the*  
40 *California Constitution.*

1     SECTION 1. ~~Section 311.3 of the Penal Code is amended to~~  
2     ~~read:~~

3     ~~311.3. (a) A person is guilty of sexual exploitation of a child~~  
4     ~~if he or she knowingly develops, duplicates, prints, or exchanges~~  
5     ~~any representation of information, data, or image, including, but~~  
6     ~~not limited to, any film, filmstrip, photograph, negative, slide,~~  
7     ~~photocopy, videotape, video laser disc, computer hardware,~~  
8     ~~computer software, computer floppy disc, data storage media,~~  
9     ~~CD-ROM, or computer-generated equipment, or any other~~  
10    ~~computer-generated image that contains or incorporates in any~~  
11    ~~manner any film or filmstrip, that depicts a person under the age~~  
12    ~~of 18 years engaged in an act of sexual conduct.~~

13    ~~(b) As used in this section, "sexual conduct" means any of the~~  
14    ~~following:~~

15    ~~(1) Sexual intercourse, including genital-genital, oral-genital,~~  
16    ~~anal-genital, or oral-anal, whether between persons of the same~~  
17    ~~or opposite sex or between humans and animals.~~

18    ~~(2) Penetration of the vagina or rectum by any object.~~

19    ~~(3) Masturbation for the purpose of sexual stimulation of the~~  
20    ~~viewer.~~

21    ~~(4) Sadomasochistic abuse for the purpose of sexual~~  
22    ~~stimulation of the viewer.~~

23    ~~(5) Exhibition of the genitals or the pubic or rectal area of any~~  
24    ~~person for the purpose of sexual stimulation of the viewer.~~

25    ~~(6) Defecation or urination for the purpose of sexual~~  
26    ~~stimulation of the viewer.~~

27    ~~(c) Subdivision (a) does not apply to the activities of law~~  
28    ~~enforcement and prosecution agencies in the investigation and~~  
29    ~~prosecution of criminal offenses or to legitimate medical,~~  
30    ~~scientific, or educational activities, or to lawful conduct between~~  
31    ~~spouses.~~

32    ~~(d) Every person who violates subdivision (a) shall be~~  
33    ~~punished by a fine of not more than two thousand dollars~~  
34    ~~(\$2,000) or by imprisonment in a county jail for not more than~~  
35    ~~one year, or by both that fine and imprisonment. If the person has~~  
36    ~~been previously convicted of a violation of subdivision (a) or any~~  
37    ~~section of this chapter, he or she shall be punished by~~  
38    ~~imprisonment in the state prison.~~

39    ~~(e) The provisions of this section do not apply to an employee~~  
40    ~~of a commercial film developer who is acting within the scope of~~

1 his or her employment and in accordance with the instructions of  
2 his or her employer, provided that the employee has no financial  
3 interest in the commercial developer by which he or she is  
4 employed.

5 (f) Subdivision (a) does not apply to matter that is unsolicited  
6 and is received without knowledge or consent through a facility,  
7 system, or network over which the person or entity has no  
8 control.

O